Assassination Records Review Board
600 E Street NW • 2nd Floor • Washington, DC 20530
(202) 724-0088 • Fax: (202) 724-0457

Assassination Records Review Board

The Honorable John R. Tunheim, Chair
Experience
State of Minnesota, Chief Deputy Attorney General, 1986-Present

State of Minnesota, Office of the Attorney General, Solicitor General, 1985-86

State of Minnesota, Office of the Attorney General, Manager, Public Affairs Litigation Division, 1984-85

Law Firm of Oppenheimer, Wolff, Foster, Shepard and Donnelly, Associate Attorney, 1981-84

Senior U.S. District Judge Earl Larson in Minneapolis, Law Clerk, 1980-81

United States Senator Hubert H. Humphrey, Staff Assistant, 1975-77

Education
J.D., University of Minnesota Law School, 1980

B.A., Concordia College, 1975

Dr. Henry F. Graff
Experience
Columbia University, Professor Emeritus of History, 1991- Present

Freedom Forum Media Studies Center, Senior Fellow, 1991-92

Columbia University, Department of History, Instructor to Full Professor, 1946-91, Chairman, 1961-64

Education
Ph.D., Columbia University, 1949

M.A., Columbia University, 1942

B.S., City College, 1941

Dr. Kermit L. Hall
Experience
The Ohio State University, Dean, College of Humanities, and Professor of History and Law, 1994 - Present

The University of Tulsa, Dean, College of Arts and Sciences and Professor of History and Law, 1992-94

University of Florida, Associate/Full Professor of History and Law, 1981-92

Wayne State University, Assistant/Associate Professor, Department of History, 1976-81

Vanderbilt University, Assistant Professor, Department of History, 1972-76

Education
Master of Study of Law, Yale University Law School, 1980

Ph.D., The University of Minnesota, 1972

M.A., Syracuse University, 1967

B.A., The University of Akron, 1966

Dr. William L. Joyce
Experience
Princeton University, Associate University Librarian for Rare Books and Special Collections, 1986-Present

The New York Public Library, Assistant Director for Rare Books and Manuscripts, 1981-1985

American Antiquarian Society, Worcester, Massachusetts, Curator of Manuscripts, 1972-81, Education Officer, 1988-81

William L. Clements Library, The University of Michigan, Manuscripts Librarian, 1968-72

Education
Ph.D., The University of Michigan, 1974

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M.A., St John's University (N.Y.), 1966

B.A., Providence College, 1964

Dr. Anna K. Nelson

Experience

The American University, Adjunct Professor of History, 1992-Present, 1986-88

Arizona State University, Distinguished Visiting Professor, 1992

The American University, Associate Professor in History, 1991

Tulane University, Adjunct Associate Professor in History, 1988-90

George Washington University, Instructor to Adjunct Associate Professor, 1972-85

George Washington University, Director, History and Public Policy Program, 1980-82

Education

Ph.D., George Washington University, 1972

M.A., University of Oklahoma, 1956

B.A., University of Oklahoma, 1954

T. Jeremy Gunn
1652 Wild Pine Way
Reston, Virginia 20194
(703) 481-8196

EDUCATION

Ph.D. **Harvard University**, Committee on the Study of Religion, 1991
Field: Religion and Society
Affiliation: Graduate Associate, Center for European Studies
Awards: French Government Grant; Krupp Foundation Fellow; Gilbert Chinard Award, *Institut Français de Washington*; Center for European Studies Grant

J.D. **Boston University School of Law**, 1987, *Magna cum laude*
Awards: Hennessey and Liacos Distinguished Scholar

A.M. **University of Chicago**, General Studies in Humanities, 1978
Award: University Fellowship

B.A. **Brigham Young University**, International Relations and Humanities, 1974, *High Honors with Distinction* (highest 1%)
Awards: several scholarships

EMPLOYMENT

General Counsel and Associate Director for Research and Analysis, JFK Assassination Records Review Board, Washington, D.C., 1994-present

Covington & Burling, Associate Attorney, Washington, D.C., 1988-94
Practice Areas: international law (public and private); civil litigation (including class action and other complex cases); appellate (including Supreme Court) litigation; extensive church-state litigation; and six month full-time work in poverty law for Neighborhood Legal Services Corporation.

United States District Court, Law Clerk to the Honorable Douglas P. Woodlock, Boston, MA, 1987-88

Ropes & Gray, Summer Associate, Boston, MA, 1987

Goodwin, Procter & Hoar, Summer Associate, Boston, MA, 1986

TEACHING EXPERIENCE

Harvard University, Graduate Teaching Fellow, 1980-84

Ethics and International Relations (Stanley Hoffmann)
Rise of American Power (Ernest May)
Art and Politics (Simon Schama)

Paris and London in the Nineteenth Century (John Clive)
Moral Values in European Thought (James Wilkinson)
French Society and Politics 1715-1815 (Patrice Higonnet)
French Society and Politics 1815-1945 (Patrice Higonnet)

Massachusetts Institute of Technology, Instructor in History, 1980-81; 1981-82

Brigham Young University, Instructor in History and Humanities on overseas study program in Paris, France 1975

PUBLICATIONS

Book

A Standard for Repair: The Establishment Clause, Equality, and Natural Rights (New York and London, 1992)

Articles

"Freedom of Religion or Belief, Ensuring Effective International Legal Protection," *American Journal of International Law* (1996) (book review) (forthcoming)

"Adjudicating Rights of Conscience Under the European Convention on Human Rights," in *Religious Human Rights in Global Perspective: Legal Perspectives* (John Witte and Johan van der Vyver, eds., 1996), 305

"The Promises We Keep: Human Rights, the Helsinki Process, and American Foreign Policy," 88 *American Journal of International Law* 854 (1994) (book review)

"Neutrality, Expression, and Oppression," *23 Journal of Law & Education* 391 (1994)

"Applying Coercion: The Latest Element of Establishment," in *Why We Need Public Schools: Church/State Relations and Visions of Democracy* (Art Must, ed., 1992)

RECENT PROFESSIONAL ACTIVITIES

Chair, Committee on Human Rights, District of Columbia Bar (1995-present)
Co-Chair, Committee on Public International Law, District of Columbia Bar (1994-95)
General Counsel, National Committee for Public Education & Religious Liberty (1990-94)
Member, Board of Directors, Washington Council of Lawyers (1993-present)
International Advisory Board, World Report on Freedom of Conscience and Belief
U.S. Institute of Peace Working Group on Religion, Ideology, and Peace (1994-present)
Who's Who of American Lawyers (8th ed.)

The Assassination Records Review Board was established by The President John F. Kennedy Assassination Records Collection Act, which was signed into law by President George Bush. The five members of the Board were appointed by President Clinton, confirmed by the U.S. Senate, and sworn in on April 11, 1994. The law gives the Review Board the mandate and the authority to identify, secure, and make available all records related to the assassination of President Kennedy. It is the responsibility of the Board to determine which records are to be made public immediately and which ones will have postponed release dates.

The Review Board consists of the following members:

The Honorable John R. Tunheim, Chair; United States District Court Judge, District of Minnesota.

Dr. Henry F. Graff; Professor Emeritus of History at Columbia University.

Dr. Kermit L. Hall; Dean, College of Humanities, and Professor of History at The Ohio State University.

Dr. William L. Joyce; Associate University Librarian for Rare Books and Special Collections at Princeton University.

Dr. Anna K. Nelson; Adjunct Professor of History at American University.

The Review Board has until October 1, 1997 to fulfill its mandate.

ASSASSINATION RECORDS REVIEW BOARD

Chairman:

John R. Tunheim

Board Members:

Henry Franklin Graff
Kermit Hall
William Joyce
Anna Kasten Nelson

Executive Director:

David Marwell

JOHN R. TUNHEIM

Minnesota Chief Deputy Attorney General
102 State Capitol
Saint Paul, MN 55155
612/296-2351

Jack Tunheim is Chief Deputy Attorney General in the Minnesota Attorney General's Office — a position he has held since June, 1986. The senior appointed official in the Attorney General's Office, he is responsible for supervising and directing all operations of the office, with a staff of over 200 lawyers and 400 total employees. Among his duties are the supervision of all legal services, including both criminal and civil litigation, the recruitment and supervision of the office's lawyers, chairing the management team, representing the governor and other top state officials, working with the Legislature, and handling significant constitutional cases.

Prior to 1986, he served as Minnesota Solicitor General and Manager of the Attorney General's Public Affairs Litigation Division. He spent three years in private practice with the St. Paul law firm, Oppenheimer, Wolff, Foster, Shepard and Donnelly and served as Law Clerk to Senior U.S. District Judge Earl Larson in Minneapolis. He is a 1980 *cum laude* graduate of the University of Minnesota Law School where he served as President of the *Minnesota Law Review*. He is a 1975 *summa cum laude* graduate of Concordia College in Moorhead, Minnesota and served from 1975-1978 as a Staff Assistant to U.S. Senator Hubert H. Humphrey.

In February, 1994, his nomination by President Clinton to be a member of the U.S. Assassination Records Review Board (AARB) was confirmed by the U.S. Senate. The AARB is responsible for ensuring and facilitating the review and public disclosure of government records related to the assassination of President John F. Kennedy.

He currently teaches federal and state constitutional law as an Adjunct Professor of Law at the University of Minnesota Law School. He has served as a visiting lecturer at the University of Minnesota Law School since 1985 on the subject of presenting effective oral arguments. Jack is currently a Mondale Fellow at the Hubert H. Humphrey Institute of Public Affairs at the University of Minnesota. He serves on the Board of Directors of the Minnesota Institute for Legal Education and is a frequent continuing legal education presenter, with a special focus on the Minnesota Constitution.

He has personally argued three cases before the United States Supreme Court, *Hodgson v. State of Minnesota* (1989), *Perpich v. U.S. Department of Defense* (1990), and *Growe v. Emison* (1992), winning two. He serves the United States District Court for the District of Minnesota as a member of both the Federal Practice Committee and the Advisory Committee on Civil Justice Reform. Jack currently serves on the Executive Committee and as Secretary and immediate past-Treasurer of the American Bar Association Division on Government and Public Sector Lawyers. He was a member of the Special Committee on Lawyers in Government that successfully proposed establishing the new division. He also founded and recently completed a two-year term as Co-Chair of the Public Law Section of the Minnesota State Bar Association. He served as a delegate from the American Council of Young Political Leaders to Russia in December 1991. He was a delegate to the Democratic National Convention both in 1988 and in 1992.

He is the 1991 recipient of the Marvin Award from the National Association of Attorneys General, annually presented to the most outstanding assistant attorneys general in America. He received the 1988 President's Distinguished Service Award from NAAG for his work as an editor of the book *Office of Attorney General: Powers and Duties*. He has lectured at each of NAAG's Management Training Seminars and at numerous NAAG meetings and seminars. He chaired the 1990 and the 1991 Chief Deputies Conferences and has done frequent management consulting for attorneys general and their staffs. He chaired the first NAAG Management Review Team for the Idaho Attorney General's Office in 1991 and served on the NAAG Management Review Team for the Arkansas Attorney General's Office in 1992 and the Ohio Attorney General's Office in 1993. He chaired the Review Team for the Virgin Islands Attorney General's Office in September, 1993.

In 1990, he served as a member of Governor Perpich's Select Committee on the Impact of Drugs on Crime, Education and Social Welfare. From 1987-91, he was a member of the Synod Council of the St. Paul Area Synod of the Evangelical Lutheran Church in America. In 1985, he co-chaired the Minnesota State Bar Association/Attorney General Task Force on Legal Advice to Farmers; and in 1983, he was a co-founder of the Minnesota Pregnancy and Infant Loss Center. He served as Chair of the Washington County Planning Advisory Commission from 1989-1992. He is currently Chair of the Board of Directors of Family Service St. Croix, Vice-Chair of the Stillwater City Charter Commission and a member of the boards Midsummer: A Minnesota Festival of Music and the Norwegian-American Historical Association.

He lives in Stillwater, Minnesota, with his spouse, Kathryn, who is President of the Twin Cities public relations firm, Tunheim Santrizos, Inc., and their two children, Elizabeth and Samuel.

TUNHJX'

HENRY F. GRAFF
Professor Emeritus of History, Columbia University

Born in New York City on August 11, 1921, he was educated in the public schools, including City College, where he received a B.S.S. degree, *magna cum laude* in 1941, and was elected to Phi Beta Kappa. In 1942, he received the M.A. degree from Columbia University, and in 1949 the Ph.D. He, meanwhile, had enlisted in the Army shortly after Pearl Harbor, and rose from private to first lieutenant in the Signal Corps before going on inactive status in the early part of 1946. His principal service was as a Japanese language officer with the Army Security Agency (predecessor of the National Security Agency) which was charged with responsibility for reading foreign codes and ciphers. He received a War Department Citation and the Army Commendation Medal.

Upon returning to civilian life, Graff taught for a semester in the History Department of City College before accepting an appointment as lecturer at Columbia in the fall of 1946. He remained at Columbia thereafter until he retired in 1991, rising through the ranks to Professor and Chairman of the Department of History in 1961. (His term as Chairman ran to 1964.) He has been a visiting professor at Vassar College, and he has lectured on many campuses, including those of the service academies. He has been the Distinguished Speaker at the United States Air Force Academy, and the Sol Feinstone Memorial Lecturer at the Jewish Theological Seminary. In 1992 he was the Dean's Distinguished Lecturer in the Humanities at Columbia's College of Physicians and Surgeons. In 1993 he lectured at the Yale School of Medicine.

Graff's field of specialization is United States history, and within it, the history of the Presidency of the United States and the history of the foreign relations of the United States. He taught courses in both subjects at Columbia where he was a member of the faculties of Columbia College, the Graduate School of Arts and Sciences and the School of International and Public Affairs.

Graff served for six years on the National Historical Publications Commission (1965-71), to which he had been appointed and then reappointed by President Lyndon B. Johnson. Beginning in 1971 he served for a number of years on the Historical Advisory Committee of the United States Air Force, by appointment of the Secretary of the Air Force. In 1993 he was nominated by President William J. Clinton for membership on the newly-established Assassination Records Review Board.

Graff's books include *Bluejackets with Perry in Japan*, published by the New York Public Library, and *The Modern Researcher* (with Jacques Barzun) first published by Harcourt Brace in 1957 and now in its Fifth Edition (1992), the text edition currently issued by Harcourt and the trade edition by Houghton

Mifflin. Usually described as "the classic work on research and writing," it has been a Book-of-the-Month choice and a selection of the Quality Paperback Book Club. Graff's best-known general work is *The Tuesday Cabinet: Deliberation and Decision on Peace and War under Lyndon B. Johnson* (Prentice-Hall, 1970), which was based on extensive conversations over a period of years with the President and his principal advisors, chiefly on the subject of the Vietnam War.

A well-established standard reference work is Graff's *The Presidents: A Reference History* (Scribner, 1984). On invitation, Graff presented a copy to President Ronald Reagan for placement in the White House Library.

Graff is also the author of widely-used high school and junior high school American history textbooks: *The Adventure of the American People* (with John A. Krout); *The Free and the Brave: The Grand Experiment* (with Paul Bohannan)-- all originally published by Rand McNally & Company, and now by Houghton Mifflin Company; *This Great Nation* (Riverside Publishing Company, 1983); and *America: the Glorious Republic* (Houghton Mifflin Company, revised edition, 1990).

Graff has written extensively for the leading historical and popular journals and magazines. His book reviews have frequently appeared in *The New York Times Book Review*, and his topical articles-- on the Presidency and on international affairs-- in *The New York Times Magazine* and on the op-ed pages of *The New York Times* and the *Los Angeles Times*. He has contributed many articles to the *Dictionary of American Biography* and to other encyclopedias and compilations, including the new *Encyclopedia of the American Presidency*.

Among Graff's several current writing projects is a book of essays on selected aspects of presidential history.

For most of the years from 1950 to 1967 Graff was the historical consultant to Time, Incorporated. He was the Consulting Editor on *Life's History of the United States* (twelve volumes). During these same years he was the director of the CBS News and Public Affairs Fellowship Program at Columbia University. In 1976 he was the historical consultant for CBS's bicentennial series, The American Parade. In 1986-7 he was the consultant for ABC's acclaimed series, Our World. In 1987 he was the historical consultant for ABC's The Blessings of Liberty, a television special celebrating the bicentennial of the Constitution. In 1989 and again in 1993 he served as historical commentator during the telecast of the Presidential Inauguration on the ABC network, anchored by Peter Jennings. He has frequently been a discussant on public affairs programs. At present he is a consultant to ABC on its planned series of end-of-the-century documentaries.

In 1966 Graff received City College's coveted Townsend Harris Medal in recognition of distinguished post-graduate achievement in his chosen field. He has been honored with Columbia's Great Teacher Award and with the Mark Van Doren Award, bestowed by the student body of Columbia College for distinguished teaching and scholarship. In 1990 he received the Kidger Award of the New England History Teachers Association for distinction as teacher and author.

Graff was honored with a Senior Fellowship at the Freedom Forum Media Studies Center (formerly the Gannett Foundation Media Center) at Columbia for the academic year 1991-1992, in order to work on his book of essays on the Presidency, tentatively entitled "The Role of the Press in Shaping the Persona of the Presidency."

Graff serves as a member of the Board of Directors of the Rand McNally Company, whose headquarters are in Skokie, Illinois, and has served on the Board of Trustees of the Columbia University Press. He is President of Columbia's Friends of the Library. He is chairman of the editorial board of *Constitution* magazine, and was a member of the editorial advisory board of the *four-volume Encyclopedia of the American Presidency* published by Simon and Schuster in 1994.

Graff's professional societies and affiliations include the American Historical Association, the Organization of American Historians, the Society of the Historians of American Foreign Relations, P.E.N., and the Authors Guild. He is a Fellow of the Society of American Historians. He is also a member of the Century Association and the Council of Foreign Relations.

Graff is married to the former Edith Krantz. They have two daughters, Iris Joan Morse (Mrs. Andrew R. Morse) and Ellen Toby Graff, a partner in the law firm of Wien, Malkin & Bettex. The Graffs reside at 47 Andrea Lane, Scarsdale, New York 10583.

February 6, 1994

Additional details may be found in the current edition of *Who's Who in America*.

WILLIAM L. JOYCE

EXPERIENCE:

Princeton University
Associate University Librarian for Rare Books and Special Collections, 1986-
This position entails managing the Rare Books and Special Collections Department of the Princeton University Library including supervising a permanent staff of about 45, overseeing the budget, planning the Department's programs (including acquisitions, cataloging, collection development, conservation, reference and access, exhibitions, and publications) and space needs, and reviewing and revising as necessary policies and procedures for the Department. Additional responsibilities include sitting on the Library Council which assists the University Librarian in directing the Princeton University Libraries, and serving as liaison for the Library to the Friends of the Princeton University Library (of which I am also Secretary).

Columbia University School of Library Service
Adjunct Faculty, 1984 -1992
This appointment involved teaching three courses, a lecture course "Curatorship of Rare Books and Special Collections", a seminar, "Problems in Archival Administration," and a seminar on rare books (co-taught with Terry Belanger) until the University closed the school in July, 1992.

The New York Public Library
Assistant Director for Rare Books and Manuscripts, 1981-1986
This position included planning for and managing the Rare Books and Manuscripts and Archives Sections as well as the Arents Collections of Tobacco and Books in Parts. The position emphasized developing the Rare Books and Manuscripts Division's programs and space needs, overseeing the budget, supervising a permanent staff of 15, and reviewing and revising as necessary procedures for the continuing development and management of the Library's rare books, manuscripts and archives holdings. I also participated as a curator in the inaugural exhibition in Gottesmann Gallery, "Censorship: 500 Years."

American Antiquarian Society
Education Officer, 1977-1981
With the assistance of a grant for the Andrew W. Mellon Foundation, this position was created to plan and implement seminars, colloquia, lectures, an academic conference, readings, an adult education course, and musical performances that improved scholarly use of AAS holdings and made the Society a more visible cultural resource in the region.

Curator of Manuscripts, 1972-1981
In addition to managing acquisitions and providing reference assistance to readers, this position entailed supervising a six year project, funded by the National Endowment for the Humanities, that provided for the systematic arrangement and description of the Society's manuscript collections. (see Publications)
William L. Clements Library, The University of Michigan Manuscripts Librarian, 1968-1972

SELECTED PROFESSIONAL ACTIVITIES:

Society of American Archivists
- Committee on Professional Standards, 1987-1992 (Chairman, 1988-1989)
- Vice-President then President, 1985-1987
- Council, 1981-1985
- Co-chairman, 1981 Program Committee, Annual Meeting, Berkeley, CA
- Fellow, 1981
- Member, Committee on Archival Information Exchange, 1982-1984
- Chairman, Task Force on Institutional Evaluation, 1977-1982, (see Publications)
- Member, Committee on Education and Professional Development, 1976-1985

Rare Books and Manuscripts Section, Association of College and Research Libraries (ALA)
- Vice-chairman then Chairman, 1987-1989
- Planning Committee, 1991-1993
- Continuing Education Committee, 1984-1986
- Publications Committee, 1985-1989

Conservation Center for Artistic and Historical Artifacts, Philadelphia, PA
- Board of Directors, 1992-

Bibliographical Society of America
- Chairman, Fellowship Committee, 1981-1985
- Advisory Committee Chairman, Publishing History Sources Project, 1984- 1990

Research Libraries Committee, co-sponsored by the American Council of Learned Societies, The Association of American Universities, and the Council on Library Resources, 1987-1990

The Grolier Club of New York City, 1983-Council, 1990-

Research Libraries Group
- Advisory Task Force on Functional Requirements for the AMC Format, 1980-1981
- Committee on Archives and Special Collections, 1985-1991

American Historical Association
- Member (elected), Professional Division Committee, 1979-1981

New Jersey State Historical Records Advisory Board, 1987-

New York State Historical Records Advisory Board, 1984-1986

New York State Historical Documents Inventory Advisory Committee, 1984-1985

Massachusetts L.S.C.A. Advisory Council on Libraries, 1975-1977

National Endowment for the Humanities: Panelist, 1975, 1980, and 1988

Numerous consulting assignments

SELECTED PUBLICATIONS:

"Foxes Guarding the Hen House: Archivists in Special Collections,", Provenance: Journal of the Society of Georgia Archivists, v. 7, no. 1 (Spring 1989), 53-60.

"Archival Education: Two Fables." American Archivist, v. 51 (1988), 16-22.

"The Evolution of the Concept of Special Collections in American Research Libraries," Rare Books and Manuscripts Librarianship, v.3 (1988), 19-30.

"An Uneasy Balance: Voluntarism and Professionalism", American Archivist, v.50 (1987), 7-12.

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SELECTED PUBLICATIONS, continued

"Rare Books, Manuscripts, and Other Special Collections Materials: Integration or Separation?" College and Research Libraries, v. 45 (1984), 442-445.

"Archivists and Research Use," American Archivist, v.. 47 (1984), 124-33

"Historical Records Repositories," in Documenting America: Assessing the Condition of Historical Records in the States, Lisa B. Weber, ed. (Washington, D. C.: National Historical Publications and Records Commission, 1984).

with David D. Hall, Richard D. Brown and John B. Hench, eds. Printing and Society in Early America, (Worcester, Mass.: American Antiquarian Society, 1983).

with Mary Jo Pugh, Evaluation of Archival Institutions: Services, Principles, Guide to Self-Study (Chicago: Society of American Archivists, 1982)

"Antiquarians and Archaeologists: The American Antiquarian Society, 1812-1912," Proceedings of the American Antiquarian Society, v. 89 (1979), 123-52.

"Introduction," in Catalogue of the Manuscript Collections of the American Antiquarian Society, 4 vols. (Boston: G. K. Hall and Co., 1979).

with Michael G. Hall, "The Half-Way Covenant of 1661: Some New Evidence," Proceedings of the American Antiquarian Society, v. 87 (1977), 97-110.

Editors and Ethnicity: A History of the Irish-American Press, 1848-1883 (New York: Arno Press, 1976).

EDUCATION:

Ph.D. The University of Michigan, 1974

M.A. St. John's University (N.Y.), 1966

B. A. Providence College, 1964

For more biographical information, see Who's Who in America, 46th ed.

Kermit L. Hall

Dean

Henry Kendall College of Arts & Sciences
Professor of Law and History
The University of Tulsa
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Employment and Education

Kermit L. Hall is Dean of the College of Arts & Sciences and Professor of Law and History at The University of Tulsa, where he teaches undergraduate, graduate, and law courses in American Constitutional and Legal History. Until 1992 he was a Professor of Law and History at the University of Florida, holding appointments in the Colleges of Law and Arts & Sciences. He holds a doctoral degree from the University of Minnesota and a law degree from Yale Law School.

Publications

The Oxford Companion to the Supreme Court (Oxford, 1992), which received the American Library Association's award for "An Outstanding Reference Work of 1992," The Texas Bar Association's Award for the "Best Book on the Supreme Court in 1992," The American Bar Association's Gavel Award for 1993, and was a main selection of the History Book Club for September, 1992 and bonus selection of the Book of the Month Club for September, 1993.

By and For the People: Constitutional Rights in American History (Harlan Davidson, 1991).

The Magic Mirror: Law in American History (Oxford, 1990).

The Politics of Justice (Nebraska, 1979).

A Comprehensive Bibliography of American Constitutional and Legal History (7 vols., Kraus, 1984, 1991), which was selected by Choice as an outstanding academic book for 1985.

With Paul Finkelman and William M. Wiecek, American Legal History: Cases and Materials (Oxford, 1992).

With Eric Rise, From Local Courts to National Tribunals (Carlson, 1992).

With James W. Ely, Jr., An Uncertain Tradition: Constitutionalism and the History of the South (Georgia, 1989).

He is completing a case history of New York Times v. Sullivan under the title Heed Their Rising Voices, to be published by McGraw-Hill in 1994, and is supervising the preparation of the Oxford Companion to American Law, to be published by Oxford University Press in 1995. He is also the author of more than 60 scholarly articles and essays in books.

Professional Activities

Professor Hall has been a Fulbright Scholar in Finland and a Visiting Scholar at the American Bar Foundation; he has also held grants and fellowships from the National Science Foundation, the National Endowment for the Humanities, the American Council of Learned Societies, the Exxon Education Foundation, the Rockefeller Foundation, the U. S. Department of Education, and the Pew Charitable Trusts. He has also lectured and conducted seminars on the American legal system, legal education, and legal history in Poland and Czechoslovakia.

Hall has served as a consultant for script preparation and production of several television programs and documentaries, including "The Federal City" (Maryland Public Broadcasting, 1989), "Prayer in the Public Schools" (Maryland Public Broadcasting, 1989), "Prohibition and Constitutional Change" (Maryland Public Broadcasting, 1989), and "Simple Justice" (New Images Productions and WGBH, 1993).

Hall is currently chairperson of the Bill of Rights Education Collaborative, a joint effort of the American Historical Association and the American Political Science Association to promote teaching about the Bill of Rights in primary and secondary schools, a member of the Editorial Board of the Law & Society Review, Associate Editor of the American Journal of Legal History, editor of Bicentennial Essays on the Bill of Rights, a monograph series published by Oxford University Press, co-editor with David O'Brien of Constitutionalism and Democracy, a monograph series published by the University Press of Virginia, a member of the Board of Directors of the Oklahoma School of Science and Mathematics, the ERIC Clearinghouse for Social Studies Education, and a member of the Board of Advisors, American Bar Association's Commission on College and University Nonprofessional Legal Studies.

Anna Kasten Nelson
3121 Quebec Pl. N.W.
Washington, D.C. 20008

George Washington University Ph.D. History, 1972

ACADEMIC POSITIONS

Adjunct Professor in History
The American University, 1986-1988, 1992-
Visiting Professor in History
Arizona State University, Spring 1992
Associate Professor in History
The American University, 1991
Adjunct Associate Professor in History
Tulane University, 1988 -90.
Instructor to Adjunct Associate Professor in History
George Washington University, 1972 - 1985
Director, History and Public Policy Program,
George Washington University, 1980-82.

SELECTED CONCURRENT POSITIONS

Consultant, Historical Division, Army Corps of Engineers, 1985-1989.
Project Director, Committee on the Records of Government 1983-1985.
Historical Consultant, National Academy of Public Administration Panel, "The Role of the President in Managing the Federal Government," 1979-80.
Consultant, Congressional Research Service, Library of Congress, 1978-1979.
Research Associate, National Study Commission on Records and Documents of Federal Officials, 1976-1977.

RECENT AND OTHER SELECTED PUBLICATIONS

"History as a Period Piece?" (Feature Review), Diplomatic History, Winter 1995.

"The Importance of Foreign Policy Process: Eisenhower and the National Security Council," in Eisenhower: A Centenary Assessment, LSU Press, 1994 (forthcoming).

"George Aiken: Senator from Vermont," Vermont History (forthcoming).

"Wayne Morse," Robert Cutler," articles for American National Biography. (forthcoming)

"The Ubiquitous Mr. Clifford," (Review Essay), Diplomatic History, Winter 1993.

"The Historian's Dilemma," Understanding Congress: Research Perspectives, GPO, 1991.

"President Kennedy's National Security Policy: A Reassessment," Reviews in American History, March 1991.

"John Foster Dulles and the Bipartisan Congress," Political Science Quarterly, Spring, 1987.

"President Truman and the Evolution of the National Security Council," Journal of American History, September, 1985.

" 'On Top of Policy Hill": President Eisenhower and the National Security Council." Diplomatic History, Fall, 1983.

State Department Policy Planning Staff Papers, 1947-1949 (3 vols.), (ed.) Garland Press, 1983

"Destiny and Diplomacy, 1845-1865," Haynes/Walker, eds. American Foreign Relations: A Historiographical Review, Greenwood Press, 1981.

SELECTED PROFESSIONAL ACTIVITIES AND ORGANIZATIONS

Guest Editor, "Rethinking the Cold War," Organization of American Historians Magazine of History, Winter 1994.

More than three dozen appearances at scholarly meetings on American foreign policy, federal information policy, congressional research and public history.

Articles on access to public records in The Chronicle of Higher Education, 1988 and 1992; OAH Newsletter, 1984; SHAFR Newsletter, (Society for Historians of American Foreign Relations), June -December 1977.

American Historical Association
- Member, Jt. Committee of Historians/Archivists, 1989-91.
- Member (elected), Research Division, 1986-89

Organization of American Historians
- Department of State Advisory Committee on Historical Diplomatic Documentation 1992-1994.
- Committee on Access, 1982-1988 (Chair, 1984-1986)

Consultant and Panel Participant, National Endowment of the Humanities. (1983. 1987, 1988, 1990, 1991).

Testimony before Congressional Committees for AHA and OAH on access to public records and archival policy, (November, 1981; March 1982; June 1983; September 1986; September 17, 1986)

DAVID G. MARWELL

Biographical Information

On July 1, 1994, the Berlin Document Center (BDC) was transferred to the German Federal Archives (Bundesarchiv) marking the end of nearly 48 years of American control of this unique organization. With an estimated 25 million Nazi-era personnel-related files, the BDC was once a crucial source of evidence for the Nuremberg Trials and is today an incalculably important source for the study of the Third Reich. The transfer also marked the end of David Marwell's tenure as Director of the BDC.

A well-trained scholar with a PH.D. in History, Marwell came to Berlin in 1988 from the Office of Special Investigations (OSI), U.S. Department of Justice where he held the position of Chief of Investigative Research. At OSI, he was involved in researching and preparing cases against accused Nazi war criminals residing in the United States. In addition, he was selected to participate in the Klaus Barbie Investigation (1983) and played a major role in the Josef Mengele investigation (1985), both of which received international attention.

In connection with the Joseph Mengele and Klaus Barbie investigations, Marwell was in charge of assembling all relevant documentary evidence relating to any possible connection between these individuals and U.S. institutions or personnel. The investigations were two of the most unusual ever undertaken and through them he gained siginificant experiences in the identifying and locating documentary resources. The former Director of OSI, Allan A. Ryan, Jr., in his book *Quiet Neighbors: Prosecuting Nazi War Criminals in America*, described Marwell as "an experienced and careful historian who could find documents in archives when no one else could."

When Marwell arrived at the Document Center, the institution had been rocked by a scandal involving a significant theft of documents. The resulting focus on the Center revealed that it had been neglected in many areas for many years and suffered from an outmoded administrative structure, a disaffected and undertrained staff and a lack of professional guidance. It was Marwell's job to bring the Center up to standard and prepare it for turnover to the German government.

The challenges facing Marwell were not only to manage a complex institution (with an annual budget of eight million deutschmarks) and repair past deficiencies, but also to define a future for an institution in transition. He prepared a "five year plan" for the BDC that set five goals, developed a corresponding program to meet each goal, and designed a system to monitor the progress. In achieving all of the goals, Marwell:

- Introduced computer technology (there was not a single computer at the BDC when he arrived) and developed a sophisticated, integrated information retrieval system that has been described as a model for archive administration;

- Created a fully professional document conservation and restoration program;

- Developed a staff (50 Germans and 20+ Americans) that is better trained and far more responsible, flexible and creative than it had been;

NOMINATIONS HEARING
before the
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
on

Tuesday, February 1, 1994
10:00 a.m.
Room 562 of the Dirksen Senate Office Building

W I T N E S S   L I S T

MEMBERS, ASSASSINATION RECORDS REVIEW BOARD

Henry Franklin Graff
Nominee

Kermit L. Hall
Nominee
TO BE INTRODUCED BY:
The Honorable David L. Boren
United States Senator (D-OK)

William L. Joyce
Nominee

Anna Kasten Nelson
Nominee

John R. Tunheim
Nominee
TO BE INTRODUCED BY:
The Honorable Paul Wellstone
United States Senator (D-MN)

* * * * *

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF HENRY FRANKLIN GRAFF

A. BIOGRAPHICAL INFORMATION

1. Name: Henry Franklin Graff

2. Position to which nominated:

   Member, Assassination Records Review Board.

3. Date of nomination: November 5, 1993.

4. Address: 47 Andrea Lane Scarsdale, NY 10583-3115. Office at same address.

5. Date and place of birth: August 11, 1921, New York, NY.

6. Marital status: married, Edith Krantz

7. Names and ages of children: Iris Graff Morse, 45 years old; Ellen Toby Graff, 39 years old.

8. Education:

   George Washington High School, New York, NY 9/33-6/37 academic diploma 6/37
   City College of New York, New York, NY 9/37-6/41 B.S. in S.S, 6/41
   Columbia University, New York, NY 9/41-5/42 M.A. 6/42
   " " 3/46-6/49 Ph.D. 6/49

9. Employment record:

   Fellow, Department of History, City College of New York 9/41-6/42

   Tutor in History, City College of New York 2/46-6/46

   Member, Department of History, Columbia University 9/46-6/91, rising through the ranks from instructor to full professor, serving as Chairman, 1961-64.

   Senior Fellow, Freedom Forum Media Studies Center, NY, 9/91-6/92

10. Military Service:

    6/42-5/44 A.U.S., Private to T-3, honorable discharged
    5/44-3/45 A.U.S., honorable discharge as First Lieutenant, Signal Corps (cryptanalytic and Japanese-language officer)

HENRY FRANKLIN GRAFF, cont'd

11. Government experience:

    Member, National Historical Publications Commission, appointed by President Lyndon B. Johnson, 1965, reappointed, 1968.
    Member, Historical Committee, United States Air Force, 1972-80.

12. Previous Appointments: No.

13. Business relationships:

    Director, Rand McNally & Company, Skokie, IL
    Partner, Parkview Realty Company, Yonkers, NY
    Secretary-Treasurer, Graff-47 Realty Corp., Scarsdale, NY
    Chairman, Friends of the Columbia University Libraries
    Former trustee, Columbia University Press

14. Memberships:

    Phi Beta Kappa, Phi Beta Kappa Associates, the American Historical Association, the Organization of American His torians, the Society of American Historians, Society of the Historians of American Foreign Relations, Center for the Study of the Presidency, the Authors Guild, PEN, the Century Association, Sunningdale Country Club, the Council on Foreign Relations

15. Political affiliations and activities:

    (a) none
    (b) none
    (c) none

16. Honors and awards:

    Fellowship, American Council of Learned Societies, 1942
    Army Commendation Medal, 1945
    Townsend Harris Medal, the City College of NY, 1966
    Mark Van Doren Award, Columbia University, 1981
    Great Teacher Award, Columbia University, 1982
    Kidger Award of the New England History Teachers Association, 1990
    Senior Fellowship, Freedom Forum Media Studies Center, 1991-2

HENRY FRANKLIN GRAFF cont'd

17. Published writings:

BOOKS:

Bluejackets with Perry in Japan (New York, New York Public Library (1952)
The Modern Researcher (with Jacques Barzun) (New York, 1957) Latest edition is the Fifth, published in 1992-- hardcover edition by Houghton Mifflin Co., paperbound edition by Harcourt Brace.
The Adventure of the American People (with John A. Krout) (Chicago, Rand McNally & Co. 1959, second ed., 1968, third ed., 1973)
American Themes: Selected Addresses of John Allen Krout (with Clifford L. Lord) (New York, Columbia University Press, 1963.
cons.ed., The Life History of the United States, 12 vol. (New York, Time, Inc., 1963-64)
The Free and the Brave (Chicago, Rand McNally & Co., 1967, second ed., 1972, third ed., 1977, fourth ed., 1980.)
with the Editors of Silver Burdett, Thomas Jefferson (Morristown, NJ., 1967)
ed., American Imperialism and the Philippine Insurrection (Boston, Little Brown & Co., 1969)
The Tuesday Cabinet: Deliberation and Decision on Peace and War under Lyndon B. Johnson (Englewood Cliffs, NJ, Prentice-Hall, 1970.
The Call of Freedom (with Paul J. Bohannan) (Chicago, Rand McNally & Company, 1977)
The Promise of Democracy (with Paul J. Bohannan) (Chicago, Rand McNally & Company, 1977

This Great Nation: A History of the United States (Chicago, Riverside Publishing Co. 1983)
America: The Glorious Republic (Boston, Houghton Mifflin Co., 1985, Second Edition, 1990).
The Presidents: A Reference History (New York, Charles Scribner's Sons, 1985)

CHAPTERS OF BOOKS:

"Problem of the Interregnum," in The Dynamics of the American Presidency. Compiled and edited by Donald Burce Johnson and Jack L. Walker, New York: John Wiley and Sons, Inc., 1964, pp. 125-128. Reprinted from The New York Times Magazine, October 2, 1960, pp. 15, 88-89.
"The Charles River Bridge Case," in Quarrels That Have Shaped the Constitution. Ed. by John A. Garraty, New York: Harper and Row, 1964, pp. 62-76. Colophon edition (Harper paperback), 1966.
Chapter 81, "American Imperialism," in John A. Garraty and Peter Gay, eds., The Columbia History of the World (New York, 1972.

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ARTICLES:

"The Early Impact of Japan upon American Agriculture," Agricultural History, 23:2 (April, 1949), pp. 110-16.

"The Lesson of a Japanese Revolution," Political Science Quarterly, 65:3 (September 1950, pp. 431-40).

"Bluejackets with Perry in Japan," New York Public Library Bulletin, 55:3-22, 66-85, 133-47, 162-80, 225-40, 276-87, 449-50 (Jan-Jul).

"Knowledge for Freedom," Baltimore Bulletin of Education, 31-4, April 1954.

"Playing Political Possum Isn't Easy," The New York Times Magazine, June 26, 1960, pp. 13, 40-1.

"Problem of the Interregnum," The New York Times Magazine, October 2, 1960, pp. 88-9.

"Bipartisanship: Only a Dream," The New York Times Magazine, December 25, 1960, pp. 8, 12-3.

"Quipmasters of Politics," The New York Times Magazine, September 17, 1961, pp. 16, 39-41.

"The Kind of Mayor LaGuardia Was," The New York Times Magazine, October 22, 1961, pp. 46, 52-3.

"McGuffey's Lessons--and Un-Lessons," The New York Times Magazine, December 3, 1961, pp. 50-2, 110-15.

"The College Survey Course in American History," Social Education, 25:281-3, October 1961.

"CEEB Advanced Placement Examination: American History -- Commentary by Henry F. Graff," Social Education 26: 251-62, May 1962.

"Decease of the Log-Cabin Legend," The New York Times Magazine, June 30, 1963.

"Life With Father, the President," The New York Times Magazine, July 14, 1963. Reprinted The Milwaukee Journal, November 13, 1963.

"Preserving the Secrets of the White House," The New York Times Magazine, December 29, 1963, p. 9, 30-1.

"From Tippecanoe to Scranton, Too," The New York Times Magazine, July 5, 1964, pp. 11, 16.

"A Heartbeat Away," American Heritage, xv, No. 5 (August, 1974), 81-87.

"The Man Who -- Loses," The New York Times Magazine, November 15, 1964, pp. 36, 132, 134.

"The Presidency,by the Presidents," The New York Times Magazine, April 12, 1964, pp. 18-19, 105.

"Isolationism Again -- with a Difference," The New York Times Magazine, May 16, 1965, pp. 26-27, 98-100. Reprinted in Congressional Record, iii No. 93 Monday, May 24, 1965, 10981-83. Also reprinted in Freedom House Reprint Series, No. 17.

"Decision in Viet Nam: How Johnson Makes Foreign Policy," The New York Times Magazine, July 4, 1965, pp. 4-7, 16-20. Reprinted in Robert A. Divine, ed., American Foreign Policy Since 1945. Chicago: Quadrangle Books, 1969, pp. 215-32. Abridged, The Sunday Times (London), July 4, 1965, pp. 11, 13.

"Teach-in on Vietnam," The New York Times Magazine, March 20, 1966, pp. 25, 128-133.

"The Wealth of Presidents," American Heritage, xvii, No. 6 (October, 1966) pp. 4-5, 106-111.

"Patriotic Values in America: An Historian's View," Perspectives in Defense Management, August, 1968, pp. 1-17.

"Troubled America is Changing," (Bei wa yamitsutsu Kawatte yuku), in Yomiuri Shimbun (TokyoO, September 28,1968. First of series, "This is America" (Zoku Kore ga Amerika da). Subsequent articles were "Trend of the Times, 'Black-White coexistence' " (Toki no nagara 'Kuro-Shiro kyoson'), October 6, 1968; "The Difficult Period of Political Reorganization," (Seiji saihenki no nayami), October 8, 1969. Also, in English, "Americans Aware of Need to Adjust Foreign Policy," November 5, 1968.

"Transition at the White House," The New Leader, LI, No. 25 (December 30, 1968), pp. 3-7.

"Salo W. Baron: Historian of the Jews" (Symposium), Jewish Heritage, xi, No. 4, (Summer, 1969), pp. 45-47.

"Participatory Foreign Policy," The New Leader, liii, No. 5 (March 2, 1970), pp. 10-15. Reprinted in Congressional Record, cxvi, No. 4 (Friday, March 20, 1970), S4131-3.

"The 'Ordinary Many' as President," The New Leader, September 2, 1974, pp. 7-9.

"From Independence to Interdependence," in America at 200, Headline Series, no. 227, pp. 36-60. New York, Foreign Policy Association, Inc. 1975.

"The President and the Press," in Covering the '76 Elections: A Dialogue Between Journalists and Social Scientists (Columbia Journalism Monograph, NO. 2, 1976).

"To Choose a President," published March 7, 1976 (written for Associated Press).

"Do Americans Understand Democracy?" in Perspectives in Defense Management, No. 24, Winter 1975-1976, pp. 69-77.

"Presidents as Penman," in Dora B. Weiner and William B. Keylor, eds., From Parnassus: Essays in Honor of Jacques Barzun, New York, 1977.

"Lyndon B. Johnson: Frustrated Achiever," in Philip C. Dolce and George Skau, eds., Power and the Presidency, (New York, 1977).

"Presidents are Now Mayors," The New York Times, July 18, 1979.
"Electing Civilians," The New York Times, February 22, 1980.
"Threats to Presidency," The New York Times, July 25, 1980.
"The Vexing of the U.S. Presidency: An Interview with Henry F. Graff," by Ceil Cleveland, Columbia, Fall, 1980, pp. 33-7.

MISCELLANEOUS PIECES:

Biographical sketch of Jacob Ruppert in Dictionary of American Biography, Supplement 2, pp. 589-90 (New York, 1958).
Introduction to Margaret Bassett, Profiles and Portraits of American Presidents, (Freeport, Maine, 1964).
Preface to James Warner Bellah, Soldiers' Battle: Gettysburg, New York 1962.

REVIEW ESSAYS AND REVIEWS:

Numerous reviews and review articles for:
American Historical Review
Journal of Modern History
Political Science Quarterly
The New Leader
Columbia Law Review
Saturday Review
The New York Times Book Review

HENRY F. GRAFF cont'd

I have also contributed biographical sketches over the years to the Dictionary of American Biography. These have allowed me to indulge my affection for baseball. I have written the sketches of

Ty Cobb
Lou Gehrig
Rogers Hornsby
Mel Ott
Jacob Ruppert
Honus Wagner
Heine Zimmerman

Yet to be published are those of Casey Stengel and Jackie Robinson, which will appear shortly in the latest Supplement volumes of the DAB.

I contributed the articles on Gerald Ford and Branch Rickey to the Reader's Companion to American History (Boston, Houghton Mifflin, 1992)

I contributed the articles on Lyndon B. Johnson, the Great Society, Presidential retreats, and Presidential secretaries to be published in the forthcoming four-volume Encyclopedia of the American Presidency (New York, Simon & Schuster, 1993).

I contributed a chapter, "The Campaign of 1928," to Running for President, a two-volume history of presidential campaigning edited by Arthur Schlesinger, Jr. and Fred Israel planned for publication by Simon & Schuster in 1994.

I am at work on a book of essays on the Presidency.

In recent years I have written a number of Op-Ed articles for the New York Times and the Los Angeles Times.

HENRY FRANKLIN GRAFF, cont'd

18. Speeches:

I have no texts of formal speeches delivered in the past 5 years.

19. Congressional Testimony:

I have never testified before a Committee of the Congress.

20. Selection:

(a) Do you know why you were chosen for this nomination by the President? I assume that I was considered to have professional qualifications especially suiting me for the position.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment? I have spent a lifetime teaching and writing about the history of the presidency and about American history in general. The work of this appointment is bound to draw on the expertness I believe I have acquired.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organiza tions if you are confirmed by the Senate?

I do not have such connections.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

No.

3. Do you have any plans, commitments or agreements after completing service to resume employment, affiliation or practice with your previous employer, business firm, associa tion or organization?

No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No.

HENRY FRANKLIN GRAFF cont'd

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

My fees as a Director of Rand McNally & Company are being deferred until such time as I retire from the Board.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

None.

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

None.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide copies of any trust or other agreement.)

None will arise.

HENRY FRANKLIN GRAFF, cont'd

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of thics for unprofessional conduct by, or been subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense?

No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None.

E. FINANCIAL DATA

(Retained in Committee Files.)

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AFFIDAVIT

Henry F. Graff being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Henry F. Graff

Subscribed and sworn before me this 16TH day of November, 19 93

Gretchen Barbieri
Notary Public

GRETCHEN BARBIERI
Notary Public, State of New York
No. 4776146
Qualified in Westchester County
Commission Expires Jan. 31, 19 95

PRE-HEARING QUESTIONS FOR
HENRY F. GRAFF
TO BE A MEMBER OF THE
ASSASSINATION RECORDS REVIEW BOARD

I. NOMINATION PROCESS AND POTENTIAL CONFLICTS

1. Were any conditions, expressed or implied, attached to your nomination to be a member of the Assassination Records Review Board (ARRB)?

No.

2. Have you made any commitments with respect to policies or programs affected by your role as a member of the ARRB? If so, what are they?

No.

3. Are there any issues involving the ARRB from which you may have to disqualify yourself? If so, please explain.

No.

4. Have you been a party to any legal actions or administrative proceedings pertaining to access to, or disclosure of, federal records on the subject of the assassination of President Kennedy?

No.

II. ROLE AND RESPONSIBILITIES

1. What particular qualifications and experience do you bring to the role of being a member of the ARRB?

First, I have been a professional historian during most of my adult life, specializing in the history of the presidency and the history of United States diplomatic relations, and attaining national standing and recognition. I believe that I have a well-developed sense of historical objectivity.

Second, I served two terms as a member of the National Historical Publications Commission to which I was appointed and then reappointed by President Johnson. A chief function was to arrange for the evaluation and publication of collections of documents with historical significance. I participated fully in the activities of the NHPC and gained indispensible experience in judging documentary work.

Third, as co-author of The Modern Researcher (which has been described as the "classic guide to research and writing" and

which now is in its Fifth Edition and its thirty-sixth year of publication), I have a keen sense of the methods and needs of researchers.

2. What do you consider to be your primary responsibilities and priorities as an ARRB member?

My first responsibility is to help establish the determination of the Board to fulfill the purpose of the legislation creating it.

The second is to help oversee the orderly and complete gathering of the documents from the respective agencies holding them.

The first priority is to help structure the Board so that the work can proceed expeditiously and efficiently.

The second priority is to obtain the services of a knowledgeable and energetic Executive Director as soon as possible.

3. How do you envision your relationship and responsibilities--as an ARRB member-- to (a) the President, (b) the Congress, and (c) other executive branch agencies?

(a) to the President: I will aim to the best of my ability to meet the high expectations that President Bush enunciated upon signing the Act creating the Board: to help burnish the reputation of the United States Government for trustworthiness. I will be responsive to inquiries and suggestions that may emanate from the White House, while keeping in mind that the Board's own integrity is the highest desideratum.

(b) to the Congress: I will aim to fulfill the purpose of the legislation creating the Board. I will always be acutely aware of the keen interest and concern that the Congress has expressed from the beginning in the assassination itself and in the attendant issues that understanding it has generated both on Capitol Hill and in the country at large. I will be responsive to inquiries and suggestions that may emanate from the Congress, while keeping in mind that the Board's own integrity is the highest desideratum.

(c) to other executive branch agencies: I will be responsive to the special concerns that assembling the pertinent documents may create. Still, I feel obliged to keep firmly in mind that the Board's mission is the highest desideratum.

4. How do you view the job of ARRB Executive Director? What role do you anticipate playing in the selection of ARRB Executive Director and staff?

The Executive Director is central to the success of the Board's mission. He or she must be a person of judgment,

95%

The Executive Director is central to the success of the Board's mission. He or she must be a person of judgment, principle, and energy, experienced in dealing with masses of historical material and capable of comfortably delegating work to subordinates. The person must be history-minded as well as capable of administering justly and effectively an enterprise that will be substantial in size and enduring in its impact on the nation's. The Executive Director must be aware from the outset that he or she will have to be in regular contact with the Board on all vital issues arising out of the work.

I would expect to have a part in interviewing prospective nominees for the post, and then in helping to instruct the person selected as to his or her responsibilities. As to the staff, I assume that the Executive Director will have a comparatively free hand in the selection of subordinates in order to guarantee the ultimate responsibility of the Executive Director for the thoroughness of the undertaking. I would expect to be consulted on nominees for staff positions as significant issues arise.

III. POLICY ISSUES

1. Have you made any public statements-- oral or written-- regarding the assassination of President Kennedy or the public availability of government records regarding this assassination? Please explain, and provide copies of any relevant material.

I was interviewed by the Scarsdale Inquirer in the week after President Clinton announced his intention to nominate me to the ARRB. I offered some innocuous remarks to the reporter, which were not set down with complete accuracy. (I know, for example, and so said, that the Kennedy autopsy material will not be made public. Also, I specifically said that George Stephanopoulos was never a student of mine.) The text is attached.

2. Members of the ARRB will be examining security classified records with a view to their declassification and public disclosure, in whole or in part, at some time in the future.

(a) Can you describe what prior experience you have had, if any, with using or examining security classified records of the Federal Government?

During my army service in World War II as an enlisted man and as an officer of the Army Security Agency at Arlington Hall Station in Arlington, Virginia, I was engaged in cryptanalytic and translation work on the most secret Japanese diplomatic codes and ciphers. The resulting documents were classified TOP SECRET ULTRA-- the highest classification of that day. I was also privy to the MAGIC SUMMARY, which was issued daily to the White House

and to 10 Downing Street by Special Branch in the Pentagon, and was also classified TOP SECRET ULTRA.

(b) What do you think of our current security classification system? For example, would you say it operates well, has integrity, and serves the public interest?

I am not familiar with the intricacies of the classification system at present. I have never requested documents under the Freedom of Information Acts and have no personal experience on which to base an answer to the sub-question.

As a diplomatic historian, I have been concerned that the long time-lag that now obtains in the publication of The Foreign Relations of the United States Series could be considerably shortened without damage to the national interest. Still, a lack of sufficient funds may be partly responsible for this situation.

3. One of the duties of the ARRB will be to determine what constitutes an "assassination record". What criteria do you think should be used to make this determination?

I believe that an "assassination record" would be any document that directly or indirectly materially bears on the assassination. The Board will have to create criteria for what is meant by "materially". It is my further belief that individual documents and classes of documents will have to be evaluated by the Board on a case-by-case basis.

IV. RELATIONS WITH CONGRESS

1. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress, if confirmed?

Yes.

2. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress, or its duly authorized agent, if conformed?

Yes.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. Biographical Information

1. Name:

Kermit L. Hall

2. Position for Which Nominated:

Member of the Assassination Records Review Board

3. Date of Nomination:

September 9, 1993

4. Address:

Home: 1500 S. Frisco, 2F, Tulsa, OK 74119
Office: College of Arts & Sciences, Suite 111, Chapman Hall, The University of Tulsa, Tulsa, OK 74104-3189

5. Date and place of birth:

31 August 1944, Akron, Ohio, USA

6. Marital status:

Married to Phyllis Anne Moke

7. Names and age of children:

No children

8. Education:

Garfield High School, Akron, Ohio, 1959-1962, Diploma, June, 1962.

The University of Akron, Akron, Ohio, 1962-1966, B.A., June, 1966.

Syracuse University, Syracuse, New York, 1966-1967, M.A., August, 1967.

The University of Minnesota, Minneapolis, Minnesota, 1969-1972, Ph.D., August 1972.

Yale University Law School, New Haven, Connecticut, 1979-1980, Master of Study of Law, August 1980.

Harvard University, Institute for Educational Management, Cambridge, Massachusetts, 1993, Certificate, July 1993.

9. Employment Record:

Resident Advisor, Syracuse University, Syracuse, New York, September 1966-August 1967.

Second/First Lieutenant, U. S. Army, Army Security Agency, January 1968-December 1969.

Teaching Assistant, Department of History, University of Minnesota, Minneapolis, Minnesota, January 1969-June 1971.

Instructor, Metropolitan Junior College, Minneapolis, Minnesota, September 1971-June 1972.

Assistant Professor, Department of History, Vanderbilt University, Nashville, Tennessee, September 1972-June 1976.

Assistant/Associate Professor, Department of History, Wayne State University, Detroit, Michigan, September 1976-June 1981.

Associate/Full Professor of History and Law, University of Florida, Gainesville, Florida, September 1981-July 1992.

Dean and Professor of History and Law, The University of Tulsa, Tulsa, Oklahoma, July 1992-present.

10. Military Service:

Second and First Lieutenant, U. S. Army Security Agency, January 1968-December 1969, Honorable Discharge.

11. Government experience:

Member, Historical Advisory Board, Federal Judicial Center, 1989-present.

Member, Board of Directors, Oklahoma School of Science and Mathematics, 1992-present.

Panel Reviewer, National Endowment for the Humanities, Various Panels involving public programming, secondary and higher education, 1989-present.

Panel Reviewer, National Science Foundation, Law and Social Science Program, 1985-1991.

12. Previous Appointments:

No previous federal nomination.

13. Business relationships:

Member, Board of Advisors, American Bar Association, Commission on College and University Legal Studies, 1993-present.

Member, Board of Trustees, The Tulsa Philharmonic Society, 1993-present.

Member, National Advisory Board, The ERIC Clearinghouse for Social Studies, 1993-present.

Director and Trustee, American Society for Legal History, 1982-1985, 1986-1989.

Advisory Board, "Road to the War of 1812: A Journey Through Early American History," Pure Magic Productions, El Monte, California.

Advisory Board, "Unlikely Heroes," Peterson Productions, Washington, D. C.

Advisory Board, "Simple Justice," New Images Productions, Berkeley, California.

Advisory Board, "The American Constitution," Maryland Public Television, Maryland.

Co-editor, Constitutionalism and Democracy, The University Press of Virginia, 1991-present.

Co-editor, Southern Legal History, The University of Georgia Press, 1993-present.

Co-editor, Studies in Western Legal History, The University of Nebraska Press, 1987-present.

Editor, Great Cases in American Constitutional History, McGraw-Hill Publishers, 1991-present.

Editor, Bicentennial Essays on the Bill of Rights, Oxford University Press, 1986-present.

14. Memberships:

American Historical Association (Program Committee, Littleton-Griswold Prize Committee, Representative to Project '87, Chairperson, Bill of Rights Education Collaborative)
American Judicature Society
Organization of American Historians (Program Committee, Chair of Ad Hoc Committee on Access to Lawyers' Papers)
Southern Historical Association (Program Committee)

American Society for Legal History (Chair of Program Committee, Member, Board of Trustees, Chair of Committee on Openness)
The Society of Historians of the Early Republic
Social Science History Association
Western History Association (Member, Program Committee, Member, Board of Editors, Western Historical Review)
Ninth Judicial Circuit Historical Society
Phi Alpha Theta (History Honorary)
Omicron Delta Kappa (Leadership Honorary)
Phi Sigma Alpha (Leadership Honorary)
Law & Society Association (Editor, Fifth Issue: Law & Society Review, Member, Editorial Board, Law & Society Review)
American Bar Association (Member, Advisory Committee, on College and University Legal Education)
The National Audobon Society
National Geographic Society
Philbrook Museum
Gilcrease Museum
All Souls Unitarian Church
The Tulsa Philharmonic Society

15. Political affiliations and activities:

Political Affiliations and Activities:

a. List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None.

c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 5 years.

Check-off on income tax return for presidential campaigns.

16. Honors and awards:

"Native Americans and Higher Education," Summer Institute for Native American high school students, The Coca-Cola Foundation, 1994-1997.

"Defining the Core of Citizenship: Reaching Those Who Teach Teachers," Summer Institute for College Teachers, National Endowment for the Humanities, 1993-94.

"Minority Scholars in History," Grant, Pew Charitable Trusts, 1991 - 1994.

Fellow, Center for Great Plains Studies, Lincoln, Nebraska.

American Historical Association Nominee, Charles A. Dana Award of the Association of American Colleges for Pioneering Achievements in Higher Education, 1987.

Comprehensive Bibliography selected by Choice as an Outstanding Academic Book in History for 1985.

The Oxford Companion to the Supreme Court, selected by the History Book Club as a Main Selection, 1992; Named "An Outstanding Reference Work for 1992," by the American Library Association, and Certificate of Merit, Gavel Award, American Bar Association, 1993.

Fulbright Short Term Lecturer in American Constitutional and Legal History, Universities of Helsinki and Turku, Finland, February 1987.

Visiting Scholar, American Bar Foundation, Chicago, Illinois, 1986-1987.

Grant, "The South and the American Constitutional Tradition," Florida Endowment for the Humanities, 1986-1987.

Grants from Rockefeller, Hewlett, and Exxon Foundations for the History Teaching Alliance, 1984-1987. (Administered through the American Historical Association.)

Fulbright Lecturer in Law and American Studies, Kobe University, Japan, 1985-1986. (declined)

"Collaboratives on Teaching the History of the American Constitution in Secondary Schools," Grant, William and Flora Hewlett Foundation, 1984-1987.

Grant, "The Popular Election of Judges and Judicial Behavior," National Science Foundation, Law and Social Sciences Division, 1984-1986.

Grant, "The History of Popular Election of Judges," Albert J. Beveridge Fund, American Historical Association, 1984.

Grant, "The Politics of Nineteenth-Century Judicial Elections," American Association for State and Local History, 1983-1984.

Norman Wilensky Teaching Prize, Department of History, University of Florida, 1983.

"The History of the Popular Election of Judges," National Endowment for the Humanities, Summer Stipend, 1982.

"A Bibliography of American Constitutional and Legal History," American Bar Foundation Legal History Grant, 1982.
Legal History Fellow, American Bar Foundation, 1980-1981.

Post-Doctoral Graduate Fellow, Yale Law School, 1979-1980.

Post-Doctoral Fellowship, Earhart Foundation, 1979-1980.

"The Politics of Federal Judicial Selection," Grant-in-Aid, The American Philosophical Society, Summer, 1976.

"The Politics of Federal Judicial Selection," Grant-in-Aid, The American Council of Learned Societies, Summer, 1975.

17. Published Writings:

Books:

Kermit L. Hall, The Magic Mirror: Law in American History (New York: Oxford University Press, 1989).

Kermit L. Hall and Eric W. Rise, From Local Courts to National Tribunals: The Federal District Courts of Florida, 1821-1990 (Brooklyn, NY: Carlson Publishing Company, 1991).

Kermit L. Hall, The Supreme Court and Judicial Review in American History (Washington, D.C.: American Historical Association, 1985). A volume in the American Historical Association's Bicentennial Essays on the Constitution.

Kermit L. Hall, The Politics of Justice: Lower Federal Judicial Selection and the Second American Party System, 1829-1861 (Lincoln: The University of Nebraska Press, 1979).

Edited Books:

Kermit L. Hall, editor-in-chief, The Oxford Companion to the Supreme Court (New York: Oxford University Press, 1992). (James W. Ely, Jr., Joel Grossman, and William M. Wiecek associate editors).

Kermit L. Hall, William M. Wiecek, and Paul Finkelman, American Legal History: Cases and the Materials (New York: Oxford University Press, 1991).

Kermit L. Hall, Major Problems in American Constitutional History, 2 vols. (Lexington, MA: D. C. Heath and Company, 1991).

Kermit L. Hall, 'By and For the People': Constitutional Rights in American History (Arlington Heights, IL: Harlan Davidson, Inc., 1991).

Kermit L. Hall and James W. Ely, Jr., An Uncertain Tradition: The South and the American Constitutional Tradition (Athens: University of Georgia Press, 1989).

Kermit L. Hall, Collected Essays on American Constitutional and Legal History, 21 vols. (New York: Garland Publishing Company, 1986). (not included)

Kermit L. Hall, A Comprehensive Bibliography of American Constitutional and Legal History, 5 vols. (Millwood, NY: Kraus Thomson International, 1985). Supplement, 1980-1987 (Millwood, NY: Kraus Thomson International, 1991). (not included)

Kermit L. Hall, Harold M. Hyman, and Leon V. Sigal, eds., The Constitutional Convention as an Amending Device (Washington, D.C.: American Historical Association, 1981).

Herbert Weaver and Kermit L. Hall, eds., The Correspondence of James K. Polk, Volume Four, 1835-1836 (Nashville: Vanderbilt University Press, 1975). (not included)

Articles and Chapters in Books:

"Of Floors and Ceilings: State Bills of Right and the American Constitutional Tradition," in David J. Bodenhamer and James W. Ely, Jr., eds., New Perspectives on American Liberty (Bloomington, IN: Indiana University Press, 1993), pp. 213 - 240.

"Of Floors and Ceilings: The New Federalism and State Bills of Rights," Florida Law Review 44 (September 1992, forthcoming).

"If All the World Were Philadelphia: Allen Steinberg's The Transformation of Criminal Justice," Pennsylvania History 27 (Summer 1992): 13-21.

"The Irony of the Federal Constitution's Genius: State Constitutional Development," in Peter Nardulli, ed., The Constitution and American Political Development: An Institutional Perspective (Urbana: University of Illinois Press, 1992): 235-261

"The Legal Culture of the Great Plains," Great Plains Quarterly 12 (Spring 1992): 86-98.

"The Legacy of Nineteenth-Century State Bills of Rights," Perspectives on Intergovernmental Relations 17 (Fall 1991): 15-18.

"'Mostly Anchor and Little Sail': State Constitutions in American History," in Toward a Usable Past: Liberty Under State Constitutions, in Paul Finkelman and Steven Gottlieb, eds. (Athens, Ga: University of Georgia Press, 1991), pp. 388-418.

"The Supreme Court, Original Intent, and the Bill of Rights," in Raymond Arsenault, ed., Crucible of Liberty: The Bill of Rights Across Two Centuries (New York: The Free Press, 1991), pp. 3 - 22.

"American Legal History as Science and Applied Politics," Benchmark: A Quarterly Review of the Constitution and Courts 4 (Summer 1990): 227 - 238.

"Justice Brennan and Cultural History: New York Times v. Sullivan and Its Times," California Western Law Review 27 (1990-1991): 339 - 359.

"Framing the Bill of Rights," in 'By and For the People': Constitutional Rights in American History, Kermit L. Hall, ed. (Arlington Heights, IL: Harlan Davidson Publishers, 1991), pp. 14 - 25.

"The South and the American Constitution," in An Uncertain Tradition, Kermit L. Hall and James W. Ely, Jr., eds. (Athens: The University of Georgia Press, 1989), pp. 3-16.

"Law Librarians and the New American Legal History," Law Library Journal 81 (Winter 1989): 1-11.

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"The American Citizen: The Developing Legal Concept," in Foundations of American Citizenship: New Directions for Education (Washington, D. C.: Council of Chief State School Officers, 1988), pp. 41 - 61.

"Implementing the Constitution as Law: The Origins of Judicial Review," "Implementing the Constitution as Law: The Establishment of Judicial Sovereignty," and "The Amending Process and Constitutional Change," in The American Constitution, ed., Herman Belz (Baltimore: The International University Consortium, 1987), pp. 41 - 61, 62 - 83, and 400 - 30. (not included)

"The 'Magic Mirror' and the Promise of Western Legal History at the Bicentennial of the Constitution," The Western Historical Quarterly, 18 (October 1987): 429 - 36.

"The Magic Mirror: American Constitutional and Legal History," The International Journal of Social Education 1 (Autumn 1986): 22 - 48.

"Dissent on the California Supreme Court, 1850- 1920," Social Science History 10 (Spring 1987): 63 - 83.

"Why We Don't Elect Federal Judges," this Constitution no. 10 (Spring 1986): 20-26.

"Change Within Tradition: Hugh Lennox Bond, the Ku Klux Klan, and Civil Rights," The Maryland Historian 10 (Winter 1986): 110-32, with Lou Williams. (not included)

"Political Power and Constitutional Legitimacy: The South Carolina Ku Klux Klan Trials, 1871-72," Emory Law Journal 33 (Fall 1984): 921-51.

"Progressive Reform and the Decline of Democratic Accountability: The Popular Election of State Supreme Court Judges, 1850-1920," American Bar Foundation Research Journal (Spring 1984): 345-70. Reprinted in Robert F. Williams, State Constitutional Law: Cases and Materials, 2nd ed. (Charlottesville, Va.: The Michie Company, 1993).

"From Ballot to Bench: Popular Election and the Southern Appellate Judiciary, 1832-1920," in, Ambivalent Legacy: Essays on the Legal History of the South, eds., David J. Bodenhamer and James W. Ely, Jr., (University, Mississippi: University of Mississippi Press, 1984), pp. 229-55. (not included)

"Isham Green Harris: Secessionist Governor of Tennessee," in Buck Yearns, ed., The Confederate Governors (Athens: University of Georgia Press, 1985), pp. 185-94.

"Constitutional Machinery and Judicial Professionalism: The Careers of Midwestern State Appellate Court Judges, 1861-1899," in The New High Priests: The Legal Profession at the End of the Nineteenth Century ed., Gerard W. Gawalt (Westport, Conn.: Greenwood Press, 1984), pp. 29-49.

"'Think Things, Not Words': Judicial Review in United States Constitutional History," University of Florida Law Review 135 (1983): 281-95. (not included)

"'Sometimes the Otter and Sometimes the Hound': Political Power and Legal Legitimacy in American History, A Review Essay," American Bar Foundation Research Journal 2 (Spring 1983): 429-39. (not included)

"The Judiciary on Trial: State Constitutional Reform and the Rise of an Elected Judiciary, 1846-1860," The Historian 44 (May 1983): 337-54. Reprinted in Pittsburgh Federalist Society Newsletter, June, 1993.

"For Whom the School Bell Tolls: The Substance and Pedagogy of American Legal History," Northwestern University Law Review 77 (May 1982): 201-16. (not included)

"Hacks and Derelicts Revisited: The American Territorial Judiciary, 1780-1959," Western Historical Quarterly 12 (July 1981): 273-89.

"Mere Party and the Magic Mirror: California's First Lower Federal Judicial Appointments," The Hastings Law Journal 32 (March 1981): 819-37. (not included)

"The Children of the Cabins: The Lower Federal Judiciary, Modernization, and the Political Culture, 1789-1899," Northwestern University Law Review 75 (October 1980), 432-71.

"The Promises and Perils of Prosopography -- Southern Style," Vanderbilt Law Review 32 (January 1979): 331-39.

"240 Men: The Antebellum Lower Federal Judiciary, 1829-1861," Vanderbilt Law Review 29 (October 1976): 1089-1129. (not included)

"101 Men: The Social Composition and Recruitment of the Antebellum Lower Federal Judiciary, 1829-1861," Rutgers-Camden Law Journal 7 (Winter 1976): 199-227. (not included)

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"Social Backgrounds and Judicial Recruitment: A Nineteenth-Century Perspective on the Lower Federal Judiciary," The Western Political Quarterly 29 (June 1976): 243-57. (not included)

"Andrew Jackson and the Judiciary: The Michigan Territorial Judiciary as a Test Case, 1828-1832," Michigan History 59 (Fall 1975): 131-51. (not included)

"The Civil War Era as a Crucible for Nationalizing the Lower Federal Courts," Prologue: The Journal of the National Archives 7 (Fall 1975): 177-86. Reprinted in Joel Silbey, ed., The Congress of the United States 1789-1989, vol. 1 (Brooklyn, NY: Carlson Publishing Company, 1991), pp. 127-136. (not included)

"West H. Humphreys and the Crisis of the Union," Tennessee Historical Quarterly 34 (Spring 1975): 48-69. (not included)

"Federal Judicial Reform and Proslavery Constitutional Theory: A Retrospective on the Butler Bill," The American Journal of Legal History 17 (April 1973): 166-84. Reprinted in Joel Silbey, ed., The Congress of the United States 1789-1989, vol. 1 (Brooklyn, NY: Carlson Publishing Company, 1991), pp. 137 - 156.

"New Light on an Old Enigma: Sam Houston and the Grand Saline," The Chronicles of Oklahoma 51 (Fall 1973): 335-43. (not included)

Biographical Directories:

Contributor to Biographical Dictionary of U. S. Supreme Court Justices, Melvin Urofsky, ed. (New York: Garland Publishing Co., forthcoming 1994). Two essays. (not included)

Contributor to The Oxford Encyclopedia of World Politics (New York: Oxford University Press, forthcoming 1993). One essay. (not included)

Contributor to The Encyclopedia of Southern Culture, ed. by Charles R. Wilson and William Farris (Chapel Hill: University of North Carolina Press, 1989). Four essays. (not included)

Contributor to The Encyclopedia of the American Constitution, ed. by Leonard Levy and Kenneth Karst (New York: Macmillan, 1986). Fourteen Essays, from 250 - 2,225 words in length. (not included)

Contributor to _Judges of the United States_, 2nd ed. (Washington, D.C.: U.S. Government Printing Office, 1984). Over 1,000 biographical entries. (not included)

Contributor to _The Encyclopedia of Southern History_, ed. by David C. Roller and John Twyman (Baton Rouge: Louisiana State University Press, 1979). Two essays. (not included)

Reviews:

Journal of American History (10)
The Historian (7)
The American Journal of Legal History (5)
The American Historical Review (8)
Journal of the Early Republic (4)
Ohio History (5)
Detroit College of Law Review (1)
Reviews in American History (3)
Pennsylvania Magazine of History and Biography (3) _Judicature_ (3)
Vanderbilt Law Review (1)
The Midwest Review (1)
The Western Historical Quarterly (3)
Florida Historical Quarterly (5)
Constitutional Commentary (2)
New York History (1)
Law and History Review (1)
Journal of Southern History (3)
Criminal Justice History (1)
Documentary Editing (1)
Western Legal History (1)
The Register of the Kentucky Historical Society (3)
Georgia Historical Quarterly (3)
The Law and Politics Book Review (1)

18. Speeches:

"The Changing Supreme Court," Public Lecture, University of Kentucky, Louisville, Kentucky, October 18, 1993.

"Time to Reclaim: The Social History of the Lower Federal Courts," Detroit Historical Society, October 13, 1993.

"Civil Rights and the Press," Public Lecture, The Gilman School, Baltimore, Maryland, March 29, 1993

"The Power of Comparison in Teaching About Rights," Public Lecture, The Mershon Center, Ohio State University, Columbus, Ohio.

"The Changing Supreme Court," Public Lecture, Smithsonian Institution, Washington, D. C., October 1992.

"Public Libel Law and Modern American Morality," Humanities Lecture Series, Kansas State University, Manhattan, Kansas, September 1992.

"Sober Second Thoughts: Doing the History of the Federal Courts," Eleventh Federal Circuit Historical Society, Hilton Head, South Carolina, May 2, 1992. (included)

"The Bill of Rights and Original Intent," Keynote Address, University Symposium on the Bill of Rights, East Carolina University, Greenville, North Carolina, November 1991.

"What We Know About the Bill of Rights at Two-Hundred Years," Keynote Address, Central Michigan University, November 1991.

"The Problem of Incorporation and the Second Amendment," University of Arizona Law School, Tucson, Arizona, November 1991.

"Is There a Core Body of Knowledge about the Constitution and the Bill of Rights?" Hearing Session Address, The Leon Jaworski Symposium about Teaching the Constitution and the Bill of Rights in the 21st Century, Smithsonian Institution, Washington, D. C., August 1991.

"First Things First: The 'Central Meaning' of the Bill of Rights," Session Keynote Address, Annual Meeting of the Association for Education in Journalism and Mass Communication, Boston, Massachusetts, August 1991.

"The Bill of Rights in Comparative International Perspective," Session Keynote Address, National Conference of State Legislatures Annual Meeting, Orlando, Florida, August 1991.

"The World We Have Lost: The Bill of Rights Today," Keynote Address, Georgia Bicentennial Commission Symposium on the Bill of Rights, Atlanta, Georgia, July 1991.

"Teaching the Constitution and the Bill of Rights: What to Do and What Not to Do," Symposium on Teaching about Law in Community Colleges, Miami-Dade Community College, Miami, Florida, May 1991.

"The Law of Libel and the First Amendment Revisited," Symposium on the Bill of Rights, University of Minnesota Law School, May 1991.

"The Cultural History of the Law of Libel," Department of History and College of Law, University of Illinois, April 1991.

"The Legal Culture of the Great Plains," Keynote Address, Center for Great Plains Studies' Symposium on the Bill of Rights, University of Nebraska, Lincoln, Nebraska, March 1991.

"New York Times v. Sullivan and Its Times," Keynote Address, Drake University Law School Symposium on "Values in Conflict: the First Amendment and the Law of Libel," Des Moines, Iowa, March 1990.

"Civil Rights and the Law of Libel, 1950-1964," Syracuse University Law School, October 1989.

"A Little Bad History is Too High A Price for Certainty in the Law," Keynote Address, Symposium on the History of Constitutional Rights, The Ohio State University, Newark, April 1989.

"Heed Their Rising Voices: The Civil Rights Background of New York Times v. Sullivan," Boston University Law School, March 1989.

"State Constitutions in the Political Process," Symposium on Constitutionalism and the Political Process, University of Illinois, November 1987.

"The Imperial Judiciary at the Bicentennial of the Constitution," Keynote Address, Symposium on the Bicentennial of the United States Constitution, University of Alabama at Huntsville, March 1987.

"Amending the Constitution," Jefferson Foundation National Meeting, Washington, D. C., June 1987.

"The Law Librarian and the New Legal History," American Association of Law Libraries, Chicago, July 1987.

"Original Intent and the Founding Fathers at the Bicentennial of the Constitution," Symposium on the History of Constitutional Rights, Pennsylvania State University, June 1987.

"The Constitution and the Judicial Power at the Bicentennial," Pensacola Naval Air Station Association Bicentennial Celebration, Pensacola, Florida, September 1987.

"The American Legal Tradition," Dinner Address, Dinner in Honor of the Bicentennial of the U. S. Constitution, United States Embassy, Finland, Helsinki, Finland, February 1987.

"The Imperial Judiciary," Loyola College of Law, Chicago, Illinois, April 1987.

"All Anchor and No Sail: The Historical Development of State Constitutions," Mississippi State Bar Association Symposium on Constitutional Reform, Jackson, Mississippi, May 1986.

"The State of Constitutional and Legal History," Department of History, Indiana University at Indianapolis, March 1986.

"The Monster that Almost Ate Washington: Why We Will Not Have a Second Constitutional Convention," Keynote Address, Utah Endowment for the Humanities Conference on Teaching About the Constitution, Ogden, Utah, March 1985.

"Civil Rights and the Federal Courts During Reconstruction," Eleventh Circuit Historical Society, Atlanta, Georgia, October 1984.

"Dissent on the Texas Supreme Court, 1850-1920," Texas Tech University School of Law, Lubbock, Texas, April 1983.

"The Supreme Court in American History," American Studies Research Institute, University of Krakow, Krakow, Poland, June 1980.

"California's First Federal Judicial Appointments," Historical Society of the Northern District of California, San Francisco, California, April 1980.

19. Congressional Testimony:

U.S.House of Representatives, Subcommittee on Census and Population, September 11, 1980, HR 621.9, Bill to Commemorate the Bicentenary Era of the Federal Government.

20. Selection:

a. Do you know why you were chosen for this nomination by the President?

The Organization of American Historians submitted my name to President Bill Clinton and that he wished, on the basis of that recommendation, to appoint persons with appropriate credentials under the statute.

b. What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I believe that as a trained historian who has practiced his craft for over 20 years I am well qualified for the position to which I have been nominated. In addition, I have extensive experience working with documents in the National Archives and, generally, dealing with issues related to the accessibility of legal and governmental documents.

B. Future Employment

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

No, I see no reason to do so. I will continue as Dean of the Henry Kendall College of Arts and Sciences and Professor of History and Law at The University of Tulsa.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

Yes, in light of 1 above.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

Yes, in light of 1 above.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No, although I respond in light of 1 above.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.

C. Potential Conflicts of Interest

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

I will continue to draw my salary as Dean of the Henry Kendall College of Arts and Sciences at The University of Tulsa.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

   I know of no investments, obligations, liabilities, or other relationships which would involve a conflict of interest, real or potential.

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

   I know of no business or other relationships, dealings, or financial transactions occurring in the last 10 years that pose any conflict of interest.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

   I have no engaged in any activity during the past 10 years that has involved directly or indirectly influencing the passage, defeat or modification of any legislation.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide copies of any trust or other agreements.)

   In light of the above, no response is required.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

   Yes, I agree to have written opinions provided by the ethics officer of the appropriate agency and/or by the Office of Government Ethics.

D. Legal Matters

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

   No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, please provide details.

   No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

   No.

4. Have you ever been convicted (including please of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

   No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

   None.

E. FINANCIAL DATA

(Retained in Committee Files.)

Affidavit

Kermit L. Hall, being duly sworn, hereby states that he has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his knowledge, current, accurate, and complete.

K. L. Hall
(signed)

Subscribed and sworn before me this 3rd day of November, 1993

(Notary Public) Exp: Sept 8, 1997.

PRE-HEARING ANSWERS FROM

KERMIT L. HALL

TO BE A MEMBER OF THE ASSASSINATION RECORDS REVIEW BOARD

I. NOMINATION PROCESS AND POTENTIAL CONFLICTS

1. **Were any conditions, expressed or implied, attached to your nomination to be a member of the Assassination Records Review Board (ARRB)?**

   No.

2. **Have you made any commitments with respect to policies or programs affected by your role as a member of the ARRB? If so, what are they?**

   No.

3. **Are there any issues involving the ARRB from which you may have to disqualify yourself? If so, please explain.**

   No.

4. **Have you been a party to any legal actions or administrative proceedings pertaining to access to, or disclosure of, federal records on the subject of the assassination of President Kennedy?**

   No.

II. ROLE AND RESPONSIBILITIES

1. **What particular qualifications and experiences do you bring to the role of being a member of the ARRB?**

   I am a practicing historian of 21 years experience with a thorough knowledge of American history and of archival and recording management techniques. I have previously served on committees and task forces charged with improving the retention of both electronic and paper records. My service as a scholar demonstrates, I believe, an even-handed approach to major issues, a willingness to weight evidence impartially and fairly, and to pursue truth with fidelity to the evidence. Moreover, I have successfully brought to press books and articles that have withstood the scrutiny of my peers. I have worked extensively in archival, manuscript, and other governmental materials, both of the nineteenth and the twentieth centuries. These qualities of professionalism, character, energy, and experience are essential to the

effective fulfillment of the duties of a member of the ARRB as required under the statute.

2. What do you consider to be your primary responsibilities and priorities as an ARRB member?

As a member of the Board, I will be asked to consider whether a record constitutes an assassination record and whether an assassination record or particular information in a record qualifies for postponement or disclosure under the statute. In fulfilling these responsibilities I will be required to adhere faithfully to the letter and spirit of the enabling legislation, which carries a presumption of the immediate disclosure of all records relating to the assassination of President John F. Kennedy. My responsibility is to serve the public interest in meeting this presumption with the understanding that some materials may pose important issues of national security, identify a living person who provided confidential information and would pose a risk of harm to that person, invade privacy to a degree that outweighs the public interest, and/or compromise a security or protective procedure currently employed. In these cases a decision to postpone the release of a document may be warranted. The burden in these instances is clearly on the agency or other entity holding the record to demonstrate that the presumption of release should be set aside. In every instance the question must be answered whether the release of a document would be so harmful as to outweigh the public interest in releasing it under the terms of the statute.

3. How do you envision your relationship and responsibilities -- as an ARRB member -- to (a) the President, (b) the Congress, and (c) other executive branch agencies?

As a member of the ARRB, I recognize that my official conduct falls under the oversight of the Committee on Governmental Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate. Board members have a duty to cooperate with the exercise of such oversight jurisdiction. At the same time, the ARRB has authority to direct Government offices to provide documents and related finding aids for assassination records and, if necessary, to investigate the facts surrounding additional information, records, or testimony from individuals which may reasonably be required for me to perform my duties under the statute. The statute creating the ARRB provides that after it has made a finding with regard to documents obtained or developed solely within the executive branch, the President has the sole and nondelegable authority to require the disclosure or postponement of such record or information under the appropriate provisions of the statute. Throughout, the statue clearly provides that the ARRB engaged in a mutually

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constructive dialogue with the executive branch and the Congress about the character and disclosure of documents.

4. How do you view the job of ARRB Executive Director? What role do you anticipate playing in the selection of ARRB Executive Director and staff?

Members of the ARRB are charged with appointing an Executive Director, whose responsibilities include serving as a principal liaison to Government offices; administering and coordinating the Board's review of records; and administering the official activities of the Board. The Executive Director will have no authority to decide or determine whether any record should be disclosed to the public or postponed for disclosure. That duty resides with the Board alone. The selection of staff members will be done in keeping with the statutory requirements. Staff members will have no authority to determine whether a record should be disclosed or postponed.

III. POLICY ISSUES

1. Have you made any public statements -- oral or written -- regarding the assassination of President Kennedy or the public availability of government records regarding this assassination? Please explain, and provide copies of any relevant material.

I have made no public statements.

a) Can you describe what prior experience you have had, if any, with using or examining security classified records of the Federal Government?

From 1968 to 1969 I served as an officer in the United States Army, a position that required me to handled many classified documents and other materials. These documents ranged from war plans, to encrypted messages, to memoranda and working papers on various intelligence matters.

b) What do you think of our current security classification system? For example, would you say it operates well, has integrity, and serves the public interest?

Although I have not worked with classified documents for some time, my general sense is that the present system probably leans too heavily toward classification and over-classification of materials that really do not deserve protection. My own experience in years past suggests a tendency to make secret that which is confidential and confidential that which is really not

sensitive. Such a practice is perhaps understandable, given the vicissitudes of national security, but openness and the general availability of information about the conduct of government is to be cherished in a democracy.

3. One of the duties of the ARRB will be to determine what constitutes an "assassination record". What criteria do you think should be used to make this decision?

The statute creating the ARRB defines an assassination record as a record that is related to the assassination of President John F. Kennedy, that was created or made available for use by, obtained by, or otherwise came into the possession of the Warren Commission, the Rockefeller Commission, the Church Commission, the Pike Commission, the House Assassination Committee, the Library of Congress, the National Archives, Presidential libraries, any Executive agency, any independent agency, any other office of the Federal Government, and any State or local law enforcement office that provided support or assistance or performed work in connection with a Federal inquiry into the assassination of President John F. Kennedy. I understand that autopsy records donated by the Kennedy family to the National Archives pursuant to a deed of gift regulating access to those records, or copies and reproductions made from such records, are not included.

IV. RELATIONS WITH CONGRESS

1. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress, if confirmed?

Yes.

2. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress, or its duly authorized agent, if confirmed?

Yes.

Kermit L. Hall — Kermit L. Hall

18 Nov. 1993 — Date

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United States Senate

Committee on Governmental Affairs

Biographical and Financial Information requested of Nominees

A. <u>Biographical Information</u>

1. Name: William L. Joyce

2. Position to which nominated: Member of the Assassination Records Review Board

3. Date of nomination: Friday, October 22, 1993

4. Address: 99 McCosh Circle
Princeton, N. J. 08540-5626

Princeton University Library
1 Washington Rd.
Princeton, N. J. 08544-2098

5. Date and place of birth: Rockville Centre, N. Y. on March 29, 1942

6. Marital status: Married on August 13, 1967 to Carol Bertani Joyce

7. Names and ages of children: Susan, age 25, and Michael, age 21

8. Education:

Freeport (N. Y.) Junior- Senior High School
September, 1954- June, 1960
N. Y. S. Regents High School diploma

Providence (R. I.) College
September, 1960- June, 1964
B. A. degree

St. John's University (N. Y.)
September, 1964- June, 1966
M. A. degree

The University of Michigan at Ann Arbor
September, 1966- August, 1974
Ph. D. degree in American history

9. Employment Record:

William L. Clements Library
The University of Michigan
Manuscripts Librarian: March, 1968- September, 1972

American Antiquarian Society
Worcester, Massachusetts
Curator of Manuscripts: October, 1972- July, 1981
Education Officer: July, 1977- July, 1981

The New York Public Library
New York, N. Y.
Assistant Director for Rare Books and Manuscripts:
August, 1981- December, 1985

Princeton University Library
Princeton, N. J.
Associate Librn. for Rare Books and Special Collections:
January, 1986- present

10. Military Service: None

11. Government experience:
City of Worcester, Mass., Stubbs Drawings Fund Advisory Committee, 1979-80
Massachusetts L.S.C.A. Advisory Board, 1975-77
New York State Historical Records Adv. Board, 1984-86
New Jersey State Historical Records Adv. Board, 1987-
Panelist, National Endowment for the Humanities, 1975, 1980, 1988, and 1990.
Project consultant, "Assessment and Reporting Project," National Historical Publications and Records Commission, 1983-84

12. Previous appointments: I have not previously been nominated for any position requiring Senate confirmation.

13. Business relationships:

Trustee, Conservation Center for Art and Historic Artifacts, 1992- present

Consultant to:
Essex Institute, Salem, Mass., 1980-81
New Bedford Whaling Museum, 1980-83
Dukes County (Mass.) Historical Society, 1979
The University of Wyoming, 1980
The New-York Historical Society, 1984-85, 1987-88, and 1990.

14. Memberships:
Society of American Archivists
Committee on Professional Standards, 1987-1992 (Chairman, 1988-1989)
Vice-President then President, 1985-1987
Council, 1981-1985
Co-chairman, 1981 Program Committee, Annual Meeting, Berkeley, CA
Fellow, 1981
Member, Committee on Archival Information Exchange, 1982-1984

Chairman, Task Force on Institutional Evaluation, 1977-1982, (see Publications)
Member, Committee on Education and Professional Development, 1976-1985

Princeton Library in New York
Trustee, 1993-

Rare Books and Manuscripts Section, Association of College and Research Libraries (ALA)
Vice-chairman then Chairman, 1987-1989
Planning Committee, 1991-1993
Continuing Education Committee, 1984-1986
Publications Committee, 1985-1989

Bibliographical Society of America
Chairman, Fellowship Committee, 1981-1985
Advisory Committee Chairman, Publishing History Sources Project, 1984-1990

Research Libraries Committee, co-sponsored by the American Council of Learned Societies, The Association of American Universities, and the Council on Library Resources, 1987-1990

The Grolier Club of New York City, 1983-
Council, 1990- 93

Research Libraries Group
Advisory Task Force on Functional Requirements for the AMC Format, 1980-1981
Committee on Archives and Special Collections, 1985-1991

American Historical Association
Member (elected), Professional Division Committee, 1979-1981

Memberships only:
American Antiquarian Society
American Library Association
American Printing History Association
Colonial Society of Massachusetts
Mid- Atlantic Region Archives Conference
New-York Historical Society
Friends of the New York Public Library

Princeton Club of New York
William L. Clements Library Associates, The University of Michigan

15. Political affiliations and activities:

a) I have never held office in a political party or been a candidate for public office.
b) I have not been a member of or held office in a political party or election committee.
c) Though I have made contributions to candidates for public office, I have never contributed as much as $50 to any candidate.

16. Honors and awards:

Graduate assistantship, St. John's University, 1966.
Dissertation research grant, The University of Michigan, 1970
Fellow, Society of American Archivists, 1981

17. Published writings:

"The Scholarly Implications of Documentary Forgeries," in Forged Documents: Proceedings of the 1989 Houston Conference, Pat Bozeman, ed. New Castle, Del.: Oak Knoll Books, 1990.

"Foxes Guarding the Hen House: Archivists in Special Collections,", Provenance: Journal of the Society of Georgia Archivists, v. 7 (1989), 53-60.

"Archival Education: Two Fables," American Archivist, v. 51 (1988), 16-22.

"The Evolution of the Concept of Special Collections in American Research Libraries," Rare Books and Manuscripts Librarianship, v.3 (1988), 19-30.

"An Uneasy Balance: Voluntarism and Professionalism", American Archivist, v.50 (1987), 7-12.

"Rare Books, Manuscripts, and Other Special Collections Materials: Integration or Separation?" College and Research Libraries, v. 45 (1984), 442-45.

"Archivists and Research Use," American Archivist, v.. 47 (1984), 124-33.

"Historical Records Repositories," in Documenting America: Assessing the Condition of Historical Records in the States, Lisa B. Weber, ed. (Washington, D. C.: National Historical Publications and Records Commission, 1984).

with David D. Hall, Richard D. Brown and John B. Hench, eds. Printing and Society in Early America, (Worcester, Mass.: American Antiquarian Society, 1983).

with Mary Jo Pugh, Evaluation of Archival Institutions: Services, Principles, Guide to Self-Study (Chicago: Society of American Archivists, 1982)

"Antiquarians and Archaeologists: The American Antiquarian Society, 1812-1912," Proceedings of the American Antiquarian Society, v. 89 (1979), 123-52.

"Introduction," in Catalogue of the Manuscript Collections of the American Antiquarian Society, 4 vols. (Boston: G. K. Hall and Co., 1979).

with Michael G. Hall, "The Half-Way Covenant of 1661: Some New Evidence," Proceedings of the American Antiquarian Society, v. 87 (1977), 97-110.

Editors and Ethnicity: A History of the Irish-American Press, 1848-1883 (New York: Arno Press, 1976).

18. Speeches: I do not believe that I have made any speeches on topics directly relevant to the position for which I have been nominated.

19. Congressional testimony: On March 10, 1987 I testified briefly as President of the Society of American Archivists before the House Committee on Appropriations, Subcommittee on the Interior, in support of the annual appropriation for the National Endowment for the Humanities.

20. Selection:

a) I was selected by the President from among three nominees supplied by the President of the Society of American Archivists, in accordance with the procedure outlined in Assassination Materials Disclosure Act of 1992 (P.L. 102-526).

b) My education as a historian and my background and experience as a professionally active archivist, curator, research library administrator, and archival educator qualifies me for the position for which I have been nominated.

B. Future Employment Relationships

1. Because the position for which I have been nominated is a temporary responsibility as a member of a Federal board, I have not resigned my permanent, full-time position at Princeton University.

13-00000

2. I have not resigned my permanent position at Princeton University, as I have stated above, and expect to meet my responsibilities at Princeton while also serving the government. I also have a temporary teaching assignment for a twelve week period, from January 10 through March 25, 1994, at the University of California, Los Angeles, though I have arranged my schedule in order to be able to attend meetings of the Assassination Records Review Board. I have also arranged a leave from Princeton for this period.

3. My only commitment during my service with the government is to continue in my permanent position working for Princeton University, as stated above.

4. The only commitment that I have after my government service is concluded is to continue my work in the Princeton University Library. I have received no other offers for commitment of my services after this assignment is concluded.

5. If confirmed, I will continue my service on the Assassination Records Review Board for as long as necessary.

C. Potential Conflicts of Interest

1. The only financial arrangements that I have maintained are those related to the exercise of my duties in the Princeton University Library and as a temporary instructor in the Graduate School of Library and Information Science at UCLA this coming Winter quarter.

2. I do not believe that I have any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position for which I have been nominated.

3. I do not believe that I have had any business relationship, dealing, or financial transaction over the last ten years that could constitute or result in a possible conflict of interest in the position for which I have been nominated.

4. In the past ten years, the only activity in which I have engaged to influence the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy, has been to write occasional letters on behalf of legislation affecting my chosen professions of research librarianship and archives.

5. Should there be any possible conflicts of interest in connection with my service as a member of the Assassination Records Review Board, I would receive information from all affected parties, and take appropriate steps to eliminate the conflict.

6. I agree without reservation to having written opinions provided to the Committee by the designated agency ethics officer of the agency for which I have been nominated, as well as by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to my serving in the position for which I have been nominated.

D. Legal Matters

1. I have never been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group.

2. I have never been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation, or ordinance.

3. I have not been involved as a party in interest in any administrative agency proceeding or civil litigation, nor has any business of which I am or was an officer.

4. I have never been convicted (or offered pleas of guilty or nolo contendere) of any criminal violation other than minor traffic offenses.

5. I am not aware of any other information, favorable or unfavorable, which I think should be considered in connection with my nomination.

E. FINANCIAL DATA

(Retained in Committee Files.)

ANSWERS TO PRE-HEARING QUESTIONS

BY WILLIAM L. JOYCE

NOMINATED TO BE A MEMBER OF THE

ASSASSINATION RECORDS REVIEW BOARD

I. NOMINATION PROCESS AND POTENTIAL CONFLICTS

1. There have been no conditions, expressed or implied, attached to my nomination to be a member of the Assassination Records Review Board (ARRB).

2. I have made no commitments with respect to policies or programs affected by my role as a member of the ARRB.

3. I am not aware of any issues involving the ARRB from which I would have to disqualify myself.

4. I have not been a party to any legal actions or administrative proceedings pertaining to access to, or disclosure of, federal records on the subject of the assassination of President Kennedy.

II. ROLE AND RESPONSIBILITIES

1. The particular qualifications and experience that I bring to the role of being a member of the ARRB are the training and experience I have acquired as a historian, in addition to my work-related experience as an archivist and research library administrator.

2. My primary responsibilities and priorities as an ARRB member are to establish, in concert with other Board members, clear policies and sound procedures that can guide the work of the staff that the Board is to hire. Once policies and procedures are set and staff is in place, it is the Board's clear responsibility to oversee the training of staff in effective procedures for reviewing classified records, to advise staff in problem areas, and to oversee their work generally.

3. As an ARRB member, I envision my relationship and responsibilities to:
   a) the President to be one of faithfully executing to the best of my ability the provisions contained in the President John F. Kennedy Assassination Records Collection Act of 1992 ;
   b) the Congress to be one of fulfilling the purposes of the same legislation to the best of my ability, and to responding fully to requests for information from appropriate oversight groups concerning our progress;
   c) other executive branch agencies to be one of cooperating to the utmost of my ability to facilitate the review of any of their assassination records and to provide them with full information concerning our activities.

4. I view the job of ARRB Executive Director to be one of organizing staff for the most efficient and effective implementation of the policies and procedures adopted by the Board. Apart from setting policies and procedures, there is no more important task for the Board than hiring the best-qualified Executive Director and overseeing the Executive Director's hiring of staff.

III. POLICY ISSUES

1. I have not made any public statements-- oral or written-- regarding the assassination of President Kennedy or the public availability of government records regarding this assassination.

2. As an ARRB member, I will be examining security classified records with a view to at least partial public disclosure:

a) I have had prior experience with security classified records first in working with the Papers of Senator Arthur Vandenberg at the William L. Clements Library at The University of Michigan, where we had to initiate a declassification review of parts of those papers, and, second, in my current duties at Princeton University where we have had to initiate contact with the State Department concerning the declassification review of hundreds of reels of microfilm of the most important state documents as selected by John Foster Dulles himself.

b) The current security classification system certainly has integrity. I would hope that, in the interest of a fully informed citizenry and accountable public officials, that somewhat more emphasis might be given to disclosure of records after the passage of a specified period of time, allowing for agency

initiative to classify records beyond that time when they fall into specific categories that, in order to protect the national interest or privacy interests, must continue to be restricted.

3. The crtiteria to be used to determine what constitutes an assassination record will likely consist of several elements: the proximity of the record either to the time of the assassination or to the related activity of an assassination principal, and/or the content of the record manifestly relating it to the assassination, or an association of the record to the related activity of someone known to have been involved in events plausibly connected to the assassination.

IV. RELATIONS WITH CONGRESS

1. If confirmed, I agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress.

2. If confirmed, I agree without reservation to reply to any reasonable request for information from any duly constituted committee of Congress, or its duly auithorized agent.

PRASRCRVBD/Pre-hearing questions.wn

13-00000

A. BIOGRAPHICAL INFORMATION

1. Name:
   Anna Kasten Nelson
   (former name used: Anna Louise Kasten)

2. Position to which nominated:
   John F. Kennedy Assassinations Records Review Board

3. Date of nomination:
   October 25, 1993

4. Address:
   Residence: 3121 Quebec Pl.N.W., Washington, D.C. 20008
   Office: Department of History, The American University
   Washington, D.C. 20016

5. Date and place of birth:
   Fort Smith, Arkansas, 12/1/32

6. Marital status:
   Married, Paul Nelson

7. Names and ages of children:
   Eric M., 34.
   Michael S., 31

8. Education: List secondary and higher education institutions, dates attended, degree received and date degree granted.
   Ft. Smith (AR) High School, 1950
   Ft. Smith Junior College (now Westark), 1950-1952, A.A.
   University of Oklahoma, 1952-1954, B.A.
   University of Oklahoma, 1954-1956, M.A.
   Ohio State University, 1961-1964, Ph.D. candidate
   George Washington University, 1965-1972, Ph.D.

9. Employment record: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.
   (See attachment A)

10. Military Service: List any military service, including dates, rank, and type of discharge.
    None

11. Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those list above.
    a. Department of State Advisory Committee on Historical Diplomatic Documentation (Representing the Organization of American Historians)
    b. Reviewer and/or Panel Participant, National Endowment of the Humanities

12. Previous Appointments: Prior to this appointment, have you ever been nominated for a position requiring confirmation by the Senate?
    No

13. Business relationships: List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.
    None

14. Memberships: List all memberships and offices held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

    American Historical Association
    Jt. Committee of Historians & Archivists, 1988-1991
    Member (elected), Research Division, 1986-1988
    Congressional Fellowship Committee, 1984
    Organization of American Historians
    Committee on Access, 1982-1988 (Chair, 1984-1986)
    Jt. Committee of Historians & Archivists, 1982-1984 (Chair, 1983)
    Frederick Jackson Turner Prize Committee, 1980
    Society for Historians of American Foreign Relations
    Editorial Board, Diplomatic History, 1991-1993
    Committee on Documentation, 1989-1991 (Chair)
    Government Relations Committee, 1985
    National Council of Public History
    Editorial Board, The Public Historian, 1991-1993
    Publications Committee, 1985-1989 (Chair)
    Executive Committee, 1984-1986
    Society for History in the Federal Government
    Executive Committee, 1980, and 1993-1994.

15. Political affiliations and activities:
    (a) List all offices with a political party which you have held or any public office for which you have been a candidate.
    None

(b)List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 5 years.

Records only available for last three years.
1991 - Emily's List $200
1992 - Emily's List $700
1993 - Emily's List $100

16. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Society for History in the Federal Government, Franklin D. Roosevelt Prize, 1988 (For the Advancement of Historical Study of the Federal Government.
Harry S. Truman Library Institute, Research Grant, 1987
American Historical Association, Beveridge Grant, 1985
George Washington University, Graduate Fellowship, 1968
University of Oklahoma, Tuition Scholarship, 1953

17. Published writings: List the titles, publishers, and dates of books, articles, reports or other published materials which you have written. It would be helpful for the Committee to have three copies of each published writing. Please denote any of those for which you are unable to provide copies.

See Attachment B , including list of copies supplied.

18. Speeches: Provide the Committee with three copies of any formal speeches you have delivered during the last 5 years of which you have copies and are on topics relevant to the position for which you have been nominated.

The following is a list of speeches. Some have been reprinted (see publications). Others do not seem relevant to this position but can be made avaible to the Committee if so desired.

"Foreign Policy of Woodrow Wilson," Smithsonian Associates, October 1993 (notes only).

"Rethinking NSC 68," Seminar on the Cold War, Institute of Policy Studies, October 1991.

"George Aiken: Senator from Vermont," Aiken Lecture Series Conference, October 1991

" Eisenhower and the National Security Process," Lecture, Eisenhower Center, University of New Orleans, October, 1990.

" The Evolution of the American Foreign Policy Process from Roosevelt to Reagan," Lecture, Foreign Relations Association of New Orleans, April 1990. (notes only)

"Kennedy's National Security Policy: A Reassessment." American Historical Association, December 1989.

"Researching Congress: The Paradox of Sources," A Bicentennial Research Conference on the Congress, 1989.

"Before the National Security Adviser: Did the NSC Matter?" Soc. for Historians of American Foreign Relations, June 1988.

"Themes in American Diplomacy," Foreign Service Institute, May 1988. (notes only)

19. Congressional Testimony: Have you ever testified before a Committee of the Congress? If so, please provide details, including date(s).

a. **Senate Judiciary Subcommittee on the Constitution**, November 12, 1981, in support of Freedom of Information Act,(FOIA). Representing the Organization of American Historians (OAH).

b. **House Subcommittee on Government Information and Individual Rights**, March 10, 1982, in opposition to the draft Executive Order on National Security Information. Representing the American Historical Association (AHA), OAH, and Society of Historians of American Foreign Relations (SHAFR).

c. **Senate Select Committee on Intelligence**, June 28, 1983, on S. 1324, in opposition to the CIA modification of FOIA. Representing OAH and AHA.

d. Senate Committee on Governmental Affairs, September 9, 1986, in opposition to unqualified nominee for Archivist of U.S. Representing the Society for History in the Federal Government.

e. **House Subcommittee on Rules of the House**, September 17, 1986, in support of H.Res. 114 (preservation and access to House records), Representing the National Coordinating Committee for the Promotion of History.

20. Selection:

(a) Do you know why you were chosen for this nomination by the President?

Name included on list of names provided by the American Historical Association.

(b)What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment.

13-00000

First, since 1976, when I became a staff member of the Public Documents Commission, I have been engaged in studies of public records and have become knowledgeable about government recordkeeping and archival practices. I also have been a consistent supporter of the preservation of records and timely access for historical research. Between 1980 and 1988, I participated as a speaker on 15-16 programs having to do with public records, archives or government information policy.

Second, as an active researcher in foreign policy records as well as congressional records during the initial stages of the Cold War era, I also have an understanding of the nature of research and the kind of documentation required for such research.

Third, as a member of an advisory committee on documentation in the State Department (which required a security clearance), I have an appreciation of the kinds of documents that government agencies find too sensitive to release.

Finally, I believe that in my work on preservation and access I have illustrated a personal integrity that has allowed me to gain the trust of my professional colleagues.

B. FUTURE EMPLOYMENT RELATIONSHIPS

Not Applicable

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

none

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

none

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

none

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public ppolicy.

See item 19, testimony before Congress.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide copies of any trust or other agreements.)

not applicable

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this positionF?

Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group?

No

2. Have you ever been investigated, arrested, charged or held by any Federal, State or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic office?

No

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation?

No

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offence?

No

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

No additional information seems necessary.

E. FINANCIAL DATA

(Retained in Committee Files.)

PROFESSIONAL EXPERIENCE
Academic

Adj. Professor in History
The American University, 1986-1988, 1992-

Distinguished Visiting Professor in History
Arizona State University, January-June, 1992

Assoc. Professor in History
The American University, 1991

Adj. Assoc. Professor in History
Tulane University, 1988 - 1990

Director, Landmarks Program in American History,
The American University, 1987-1988.
Coordinated a biennial conference cosponsored by the Smithsonian's National Museum of American History, "Women and the Constitution: 200 Years.

Adjunct Associate Professor in History
George Washington University, 1977 - 1985

Director, History and Public Policy Program,
George Washington University, 1980-82.
Established a new M.A. program within the history department to prepare historians for professional participation in public agencies and private organizations concerned with public policy.

Visiting Assistant Professor in History,
George Washington University, 1975-1976.
One year appointment in U.S. Diplomatic History.

Instructor, Assistant/Associate Professorial Lecturer in History,
George Washington University, 1970-1975

PROFESSIONAL EXPERIENCE
Concurrent Non-Academic Positions

Consultant, Historical Division, Army Corps of Engineers,1985-89, Prepared a book length manuscript on the history of the Office of the Assistant Secretary of the Army/Civil Works. Book based upon research in federal records and manuscript collections as well as oral interviews.

Project Director, Committee on the Records of Government July 1983-April 1985. Chief investigator, administrator, and author with Committee Chairman Ernest R. May of the final report of a foundation funded study sponsored by ACLS, SSRC, and CLR. Creation of the Committeee was prompted by a concern for the effect of technological changes (principally computers) on public records and archives.

Historical Consultant, National Academy of Public Administration panel, "The Role of the President in Managing the Federal Government," 1979-80.
Organized and coordinated research in four presidential libraries and the National Archives for a group of political scientists preparing issue papers for panel meetings, and books and articles for publication. Prepared chapter for publication on the President and the National Security Council.

Consultant, Congressional Research Service (National Government Division), Library of Congress, July-August, 1979. Organized and prepared a report on government historical offices, federal records and the National Archives and Records Service. This report was prepared at the request of the Subcommittee on Government Information, Government Operations Committee, U.S.House of Representatives.

Consultant, Congressional Research Service (Foreign Affairs and National Defense), Library of Congress, September 1978-January, 1979.
Researched material in presidential libraries and private manuscript collections for a report on the role of Congress in the Vietnam War. Also conducted oral interviews with former members of Congress and former members of the Executive.

Staff Consultant, Select Committee on Congressional Operations, U.S. House of Representatives, July - September, 1978. Organized, researched and prepared a draft report on the records of the House of Representatives and the papers of Members of Congress.

Consultant, Bicentennial Council of the Thirteen Original States, September 1977- February 1978.
Prepared history-related material for a commemorative conference held in York, Pennsylvania, November 1977. Assisted in conducting a conference of educators from museums, libraries, national organizations and adult education groups.

Interim Director, "Project 87," a project co-sponsored by the American Historical Association and the American Political Science Association, June-August, 1977.
Coordinated the activities of the funding groups and sponsoring organizations. Created an administrative framework for the initial stage of the project.

Research Associate, National Study Commission on Records and Documents of Federal Officials, June 1976-May 1977.
Initiated and prepared two studies for the Commission; a study of foreign policy records and papers, and a study of government historical offices and public records. Also prepared a study of the federal depository library program, assisted the director in conducting panels and public hearings and assistedin writing and editing the first and subsequent drafts of the Commission report.

PUBLICATIONS

"The Importance of Foreign Policy Process: Eisenhower and the National Security Council," in Eisenhower: A Centenary Assessment, LSU Press, (forthcoming).

"The Ubiquitous Mr. Clifford," (Review Essay), Diplomatic History, Winter 1993.

"The Historian's Dilemma," Understanding Congress: Research Perspectives, Government Printing Office, 1991.

"President Kennedy's National Security Policy: A Reassessment," Reviews in American History, March 1991.

"Government-Sponsored Research: A Sanitized Past?" (Roundtable), The Public Historian, Summer 1988.

"John Foster Dulles and the Bipartisan Congress," Political Science Quarterly, , Spring, 1987

"The Committee on the Records of Government: An Assessment," Government Information Quarterly, Spring, 1987).

"Jane Storms Cazneau: Disciple of Manifest Destiny," Prologue, (Spring, 1986).

"President Truman and the Evolution of the National Security Council," Journal of American History, September, 1985.

" 'On Top of Policy Hill': President Eisenhower and the National Security Council." Diplomatic History, Fall, 1983.

State Department Policy Planning Staff Papers, 1947-1949 (3 vols.), (ed.) Garland Press, 1983

"The Public Documents Commission: Politics and Presidential Records," Government Publications Review, Vol. 9, 1982.

"Challenge of Documenting the Federal Government in the Latter 20th Century," Prologue, July, 1982.

"National Security I: Inventing A Process (1947-1960)," Heclo/Salamon, eds. The Illusion of Presidential Government. Westview Press, 1981.

"Destiny and Diplomacy, 1845-1865," Haynes/Walker, eds. American Foreign Relations: A Historiographical Review, Greenwood Press, 1981

"Disorder in the House: The Inaccessible Record," The Public Historian, Summer, 1980.

The Records of Federal Officials, (ed.) Garland Press, 1979.

"Government Historical Offices and Public Records," American Archivist, October, 1978.

"Mission to Mexico: Moses Y. Beach, Secret Agent," New-York Historical Society Quarterly, July, 1975.

"Secret Agents and Security Leaks: James K. Polk and the Mexican War," Journalism Quarterly, Spring, 1975.

Secret Agents: President Polk and the Search for Peace with Mexico, Revised Ph.D. dissertation published in the Modern American History Series, Garland Press, 1988.

Professional Newsletters and Newspapers

"The U.S. Must Declassify Its Cold-War Documents," (with Richard H. Kohn), The Chronicle of Higher Education, (Point of View), September 16, 1992.

"Congress Must Harness NSC," New Orleans Times-Picayune, July 14, 1989.

"Irrational Policies on Access to Government Records Are Undercutting Our Ability to Understand History," The Chronicle of Higher Education, (Point of View), September 28, 1988.

"Classified History," Newsletter, Organization of American Historians, August, 1984.

"In Support of History," Perspectives (American Historical Association Newsletter), February, 1984.

"History Without Historians," Newsletter, American Historical Association, February, 1978.

"Foreign Policy Records and Papers: A Case Study of One Group of Documents," Newsletter, Society for Historians of American Foreign Relations, June-December, 1977.

Book Reviews

American Archivist, (Fall, 1988); Annals of Iowa, (Summer 1988); Journal of Southern History, (Summer 1988); The Public Historian (Summer 1988); Southwestern Historical Quarterly, (January, 1989), Technology and Culture, (April, 1989); Political Science Quarterly, (Spring, 1989); Journal of American History, (June, 1991); American Historical Review, (April, 1992); Public Historian (Summer, 1992); Journal of American History, (December, 1992).

Anna K. Nelson

PRE-HEARING QUESTIONS
ASSASSINATION RECORDS REVIEW BOARD

I. Nomination Process and Potential Conflicts

1. Were any conditions, expressed or implied, attached to your nomination to be a member of the Assassination Records Review Board (ARRB)?

No

2. Have you made any commitments with respect to policies or programs affected by your role as a member of the ARRB?

No

3. Are there any issues involving the ARRB from which you may have to disqualify yourself?

No

4. Have you been a party to any legal actions or administrative proceedings pertaining to access to, or disclosure of, federal records on the subject of the assassination of President Kennedy?

No

II. Role and Responsibilities

1. What particular qualifications and experience do you bring to the role of being a member of the ARRB?

a. Staff member of the Public Documents Commission, created by Congress after the Nixon tape controversy. This Commission held hearings, sponsored studies on public records and wrote a final report. As a staff member, I was introduced to the promises and problems of preserving federal records and providing access to them.

b. Project Director, Committee on Records of Government. This foundation funded project was designed to study the relationship between information management and records management, particularly as it applies to computer generated records. As project director I worked closely with the Chairman of the Committee and its members. I organized hearings, wrote summaries of the hearings to be circulated to the Committee and was responsible for preparation of the final report.

c. As an historian of American Foreign Relations, I have researched documents in the National Archives (including four Presidential Libraries) from the era of the Cold War. I am very familiar with "withdrawal" notices of classified material as well as the kind of material that has been released.

d. I have been elected and/or appointed to several comittees sponsored by various historical organizations that have

been concerned with the declassification of historically valuable documents. As a result, I am very familiar with FOIA and the Executive Orders that control declassification.

2. What do you consider to be your primary responsibilities and priorities as an ARRB member?

The primary responsibility of the ARRB is to ensure the review and facilitate the public disclosure of records relating to the assassination of President Kennedy. It is important to note that it is not the responsibility of the Board or its members to reach any conclusions about the participants or events of the assassination. Instead, the Board must ensure that the agencies comply with the law and either open or present to the Board ALL documents pertaining to the assassination. The obligation of each member is to carefully study the documents that have not yet been disclosed to weigh the need for public disclosure against the protection of national security. A major priority of the Board should be the preservation of its own integrity in order to ensure the restoration of government credibility regarding the assassination.

3. How do you envision your relationship and responsibilities--as an ARRB member -- to (a) the President, (b) the Congress, and (c) other executive branch agencies?

a and b. My responsibility to the President and Congress is to fulfill the trust and perform the tasks mandated by the legislation to the best of my ability. I would be willing to confer with members of the White House staff and the Congress on the progress of the Board if it is necessary to do so to preserve the integrity of the process.

c. The relationship with other executive branch agencies may prove more problematical. To restore public confidence, the Board must be guaranteed complete compliance with the law by all the agencies with assassination related records. I would try to ensure that agencies have indeed searched for all relevant records, and have either provided public access to them or prepared them for action by the Board.

4. How do you view the job of ARRB Executive Director? What role do you anticipate playing in the selection of ARRB Executive Director and staff?

As described in the statute, the Executive Director should be responsibile for all administrative duties. These will involve serving as a liaison to the agencies, describing the universe of records, organizing hearings (if necessary), etc. The Executive Director will not be responsible for policy and should not be responsible for determining which documents can be opened to the public.

I would anticipate that every Board member would actively seek candidates for the position of Executive Director. However, since five individuals cannot effectively run a Board, the elected Chair

of the Board will be the person who will be closely working with the Executive Director. Thus, the Chair should be particularly involved in the selection process.

III. Policy Issues

1. Have you made any public statements -- oral or written -- regarding the assassination of President Kennedy or the public availability of government records regarding this assassination?

No

2. Members of the ARRB will be examining security classified records with a view to their declassification and public disclosure, in whole or in part, at some time in the future.

a) Can you describe what prior experience you have had, if any, with using or examining security classified records of the Federal Government?

As a member of the State Department Advisory Committee on Historical Documentation I have examined documents that have been deemed security classified (including intelligence documents) and have participated in discussions of disclosure of documents in the Foreign Relations of the United States series with desk officers of State who did not wish to see these documents published. I have also participated in meetings with agency personnel whose responsibility included preserving national security related documents.

b) What do you think of our current security classification system? For example, would you say it operates well, has integrity, and serves the public interests?

The current system is extremely expensive, labor intensive and subjective in its implementation. It has resulted in an enormous backlog of documents over 30 years old and has further eroded public trust and government credibility. The current attempt to rewrite the Executive Order governing the security classification system reflects the awareness of the White House and executive agencies that the current system is no longer viable; it does not operate efficiently, sacrifices the integrity of the record and does not, therefore, serve the public interest.

3. One of the duties of the ARRB will be to determine what constitutes an "assassination record". What criteria do you think should be used to make this determination?

This will be one of the most difficult problems facing the Board. First, I think I would seek information from the agencies on what they regarded as an assassination record. Second, since this goes to the heart of public confidence, I think this is a question that probably should be the subject of an open hearing. Currently my sense is that the Board will have to determine parameters for

the kinds of records sought, but that these should be as broad as possible.

IV. Relations With Congress

1. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly consituted committee of the Congress, if confirmed?
yes

2. Do you agree without reservation to reply to any reasonable request for information from any duly consituted committee of the Congress, or its duly authorized agent, if confirmed?
yes.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name: (Include any former names used.)**

   John Raymond Tunheim (Jack)

2. **Position to which nominated:**

   Assassination Records Review Panel

3. **Date of nomination:**

   September, 1993

4. **Address: (List current place of residence and office addresses.)**

   Residence: 704 South Third Street, Stillwater, MN 55082
   Office: 102 State Capitol, St. Paul, MN 55155

5. **Date and place of birth:**

   9/30/53 Thief River Falls, MN

6. **Marital status: (Include maiden name of wife or husband's name.)**

   Married to Kathryn Hill Tunheim (maiden name: Kathryn J. Hill)

7. **Names and ages of children:**

   Elizabeth Starr Tunheim, age 9; Samuel John Tunheim, age 5.

8. **Education: List secondary and higher education institutions, dates attended, degree received and date degree granted.**

   Marshall County Central High School, Newfolden, MN 1965-1971, June, 1971;
   Concordia College, Moorhead, MN 1971-1975, BA *summa cum laude* with honors, May, 1975;
   University of Minnesota Law School, Minneapolis, MN 1977-1980, J.D. *cum laude*, June 1980.

13-00000

9. Employment record: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

1. United States Senate, Office of Senator Hubert H. Humphrey, Field Representative, Minneapolis, MN
   7/75 to 10/77

2. Freeman for Congress, Press and Issues Director, St. Louis Park, MN
   6/78 to 11/78

3. Oppenheimer, Wolff, Foster, Shepard & Donnelly (law firm), Summer Associate, St. Paul, MN
   6/79 to 9/79

4. United States District Court, Senior U.S. District Judge Earl R. Larson, Judicial Law Clerk, Minneapolis, MN
   8/80 to 8/81

5. Oppenheimer, Wolff, Foster, Shepard & Donnelly (law firm), Associate Attorney, St. Paul, MN
   10/81 to 11/84

6. State of Minnesota, Office of Attorney General, Assistant Attorney General, Manager, Public Affairs Litigation Division, St. Paul, MN
   11/84 to 9/85

7. State of Minnesota, Office of the Attorney General, Solicitor General, St. Paul, MN
   9/85 to 6/86

8. State of Minnesota, Office of the Attorney General, Chief Deputy Attorney General, St. Paul, MN
   6/86 to present.

10. Military Service: List any military service, including dates, rank, and type of discharge.

None.

11. **Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.**

- Federal Practice Committee, United States District Court for the District of Minnesota; member (1990 to present)
- Advisory Committee on Reducing Cost & Delay, United States District Court for the District of Minnesota; member (1991 - present); chair, Internal Court Management Subcommittee (1991 - present)
- Stillwater City Charter Commission; member (1989 - present); Vice-chair (1992 - present)
- Washington County Planning Advisory Commission; chair (1989-1992); member (1985-1992)
- Governor's Select Committee on the Impact of Drugs on Crime, Education, and Social Welfare; member (1989-1990)
- Governor's Blue Ribbon Commission on the Crisis in Liability Insurance; member (1987-1988)
- Minnesota State Bar Association/Attorney General Task Force on Legal Advice to Farmers; chair (1985-1986)
- Governor's Superfund Task Force; member (1984-1985)

12. **Previous Appointments: Prior to this appointment, have you ever been nominated for a position requiring confirmation by the Senate? If so, please list each such position, including the date of nomination, Senate confirmation, and Committee hearing, if any.**

No.

13. **Business relationships: List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.**

Tunheim Lakeshore Partnership, Pelican Rapids, MN (family partnership formed to own a vacation home).

14. **Memberships: List all memberships and offices held in professional, business, fraternal, scholarly, civil, public, charitable and other organizations.**

American Bar Association (1981 - present)
- Member, Special Committee on Lawyers in Government (1990-91) (appointed)
- Secretary and Council Member, Government & Public Sector Lawyers Division (1993 - present) (elected)
- Treasurer and Council Member, Government & Public Sector Lawyers Division (1991-1993) (elected)

Minnesota State Bar Association (1981 - present)
- Co-Chair, Task Force on Legal Advice to Farmers (1985-1986)
- Member, Court Rules Committee (1989-1990)
- Co-Chair, Government Lawyers Task Force (1989-1991)
- Co-Chair, Public Law Section (1991-1992)
- Executive Council, Public Law Section (1992 - present)

Member, Board of Directors, Minnesota Institute for Legal Education (1990 - present) (nonprofit)

Member, Board of Directors, Family Service St. Croix (1990 - present) (nonprofit); Vice-Chair (1993 - present)

Member, Board of Directors, Midsummer: A Minnesota Festival of Music (1988 - present) (nonprofit)

Member and Secretary, Board of Directors, Minnesota Pregnancy & Infant Loss Center (1983-85) (nonprofit)

Member, Stillwater Rotary Club (1984 - present)

15. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

Minnesota Democratic-Farmer-Labor Party
- Delegate, Democratic National Convention 1988, 1992
- Associate Chair, Sixth Congressional District (1991 - present)
- Member, Executive Committee (1991 - present)
- Member, Central Committee (1984 - present)
- Chair, Senate District 55 (1986-1990)

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Political party memberships: All listed in 15(a). I have not been an officer for any election committee during the past ten years.

I was elected a delegate to the Democratic National Convention in 1988 and 1992.

Services rendered to parties and election committees have all been volunteer, sporadic activities such as attending fundraisers and occasional campaign rallies, attending party meetings and conventions, and some doorknocking and telephoning on behalf of local and statewide candidates. Assisted in organization of the endorsement event by Democratic Attorneys General of the Clinton-Gore ticket in Detroit, Michigan, in October, 1992.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 5 years.

These include all contributions which in aggregate total $50.00 or over to any entity over the period 1990-1993. I was unable to locate any records for 1989. I do not believe there were any significant contributions during that year.

Minnesota Democratic-Farmer-Labor Party (all units)
1993: $774.50
1992: $417.00
1991: $133.00
1990: $ 85.00
1989: cannot locate (estimated: $50.00)
Johnston for State Senate, Maple Plain, MN $50.00 (1992)
Friends of Draper for State Representative, Stillwater, MN $80.00 (1992); $60.00 (1990)
Spaeth for Governor, Bismarck, ND $50.00 (1992)
Clinton for President, Little Rock, AR $300.00 (1992)
Citizens for Keith for Chief Justice, St. Paul, MN $50.00 (1992)
Humphrey for Attorney General Volunteer Committee, St. Paul, MN $125.00 (1992); $100.00 (1993); $100.00 (1990)
Evert for Washington County Commissioner, Stillwater, MN $50.00 (1992)
Alan Page for Justice, Minneapolis, MN $100.00 (1992)
Coleman for Mayor, St. Paul, MN $25.00 (1992); $100.00 (1993)
Freeman Volunteer Committee, Richfield, MN (State Senate and Hennepin County Attorney) $50.00 (1993); $50.00 (1991); $300.00 (1990)
Freeman for Governor, Minneapolis, MN $100.00 (1993)
Rice for State Representative Volunteer Committee, Minneapolis, MN $100.00 (1993)
Knutson for DNC, Hutchinson, MN $50.00 (1993)
DNC Federal Account, Washington, DC $1,025.00 (1993)
Democratic National Committee, Washington, DC $25.00 (1993)
Wellstone for U.S. Senate, Minneapolis, MN $25.00 (1991); $150.00 (1990)
DNC Victory Fund, Washington, DC $1,000.00 (1992)
Chandler for State Senate, White Bear Lake, MN $125.00 (1990)
Fuller for State Senate, Oakdale, MN $100.00 (1990)
Friends of Dayton for State Auditor, Minneapolis, MN $100.00 (1990)
Friends of Dooley for State Representative, Stillwater, MN $90.00 (1990)
Perpich for Governor Volunteer Committee, St. Paul, MN $100.00 (1990)
Jan George for State Representative Volunteer Committee, Mahtomedi, MN $80.00 (1990)

16. **Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.**

National Association of Attorneys General, Marvin Award (1991)
(Awarded annually to up to 5 outstanding assistant attorneys general in U.S.)

National Association of Attorneys General, President's Distinguished Service Award (1988)

Mondale Fellow, University of Minnesota, Hubert H. Humphrey Institute of Public Affairs, Minneapolis (1992-1993)

Rollof Award, University of Minnesota Law School (1980)
Awarded to President/Editor-in-Chief of the Minnesota Law Review

Minnesota Journal of Law & Politics, Selected as "Rising Star Lawyer," (1993)

17. **Published writings: List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written. It would be helpful for the Committee to have three copies of each published writing. Please denote any of those for which you are unable to provide copies.**

Book: A Scandinavian Saga (Lakes Publishing, 1984)

Article: Parental Involvement in Minor's Abortions: The Aftermath of Hodgson v. Minnesota and Ohio v. Akron Center for Reproductive Health, *Abortion and The States, Political Change and Future Regulation*, Jane B. Wishner, Editor (American Bar Association, Section of Urban, State and Local Government Law) (1993)

Chapter: State Legislative Activities, *State Attorneys General, Powers and Responsibilities*, Lynn Ross, Editor (BNA: Washington, D.C. 1990). I also served as an editor on this book.

Article: Minnesota's Bill of Rights (William Mitchell Law Review)
(In progress, no copy available, scheduled for publication in 1994)

Op. Ed.: Americans Should Lend Russia a Hand on Democratic Journey, *St. Paul Pioneer Press* (January 8, 1992)

18. **Speeches: Provide the Committee with three copies of any formal speeches you have delivered during the last 5 years of which you have copies and are on topics relevant to the position for which you have been nominated.**

None.

19. Congressional Testimony: Have you ever testified before a Committee of the Congress? If so, please provide details, including date(s).

No.

20. Selection:

(a) Do you know why you were chosen for this nomination by the President?

I was one of six lawyers recommended for nomination to President Bush in December, 1992 by the President of the American Bar Association, J. Michael McWilliams, as required by the statute. The recommendation was unsolicited. I was selected from the recommendations.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I have extensive public law experience, including over seven years as the senior managing lawyers in a highly-regarded attorneys general's office with over 425 staff members. I have handled many of the most sensitive legal disputes involving the State of Minnesota over that time, personally arguing three United States Supreme Court cases and winning two. I have served throughout as the chief legal counsel to the Governor of Minnesota. I have considerable experience dealing with Minnesota's open records law and have a reputation of approaching issues in a fair, thoughtful and impartial manner. I have not been involved in any dispute over the assassination records and believe that, although I am a strong believer in openness in government, I will approach the task in a fair manner. I have considerable experience setting up governmental organizations and administrative processes and believe that experience will be helpful in organizing the process by which the Panel will conduct its work. I have played a leadership role within the National Association of Attorneys General, particularly on management-related issues.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

No. My understanding is that the position is part-time and I have no conflict of interest in my current position. I will take leave time from the State for any days I am working on panel business.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

Yes. I will continue my employment with the State of Minnesota and a planned position as Adjunct Professor of Constitutional Law at the University of Minnesota Law School.

3. **Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?**

Yes. Continue my current position.

4. **Has anybody made a commitment to employ your services in any capacity after you leave government service?**

Not in any position other than my current position.

5. **If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?**

I expect to serve the full term of the Panel which sunsets under current law.

C. POTENTIAL CONFLICTS OF INTEREST

1. **Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.**

None.

2. **Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.**

None.

3. **Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.**

None.

4. **Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.**

When employed by Oppenheimer, Wolff, Foster, Shepard & Donnelly, in 1983, I represented business interests on workers compensation legislation before the Minnesota Legislature; and in 1984, I represented a major communications company on tax legislation before the Minnesota Legislature. For both activities, I was registered as a lobbyist with the Minnesota Ethical Practices Board.

Since being employed by the Minnesota Attorney General's Office, I have been involved significantly in the development of legislation in Minnesota, including primary responsibility for the budget of the Attorney General's Office each year from 1986 to present. I have also worked with the Minnesota Legislature on criminal justice issues, environmental issues, farm credit issues, consumer issues, government records issues, labor issues and others. My work has included drafting legislation, testifying before legislative committees, serving on task forces, writing legal opinions, and working with and advising staff, legislators, and governors.

My entire employment experience in the Attorney General's Office has involved the administration and execution of law or public policy. I have been the senior appointed official in the office for over seven years, responsible for the management of the office. None of my activities have involved any records dispute with a federal agency or anything regarding assassination records.

5. **Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide copies of any trust or other agreements.)**

I cannot imagine what conflict might arise, but if there is one I would not take part in any decision of the panel affecting my conflict of interest.

6. **Do you agree to have written opinions provided to the committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?**

Yes.

D. LEGAL MATTERS

1. **Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? if so, provide details.**

No.

2. **Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.**

No.

3. **Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.**

No.

4. **Have you ever been convicted (including pleas of guilty or *nolo contendere* of any criminal violation other than a minor traffic offense?**

No.

5. **Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.**

None.

E. FINANCIAL DATA

(Retained in Committee Files.)

AFFIDAVIT

John R. Tunheim being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

John R. Tunheim

Subscribed and sworn before me
this 4th day of November, 1993.

Notary Public

JRTPERS.AA6

DEBRA M. LANCETTE
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOVEMBER 25, 1996

Committee on Governmental Affairs
United States Senate

JOHN R. TUNHEIM'S ANSWERS TO PRE-HEARING QUESTIONS TO BE A MEMBER OF THE ASSASSINATION RECORDS REVIEW BOARD

1/26/94

I. NOMINATION PROCESS AND POTENTIAL CONFLICTS

1. **Were any conditions, expressed or implied, attached to your nomination to be a member of the Assassination Records Review Board (ARRB)?**

   No.

2. **Have you made any commitments with respect to policies or programs affected by your role as a member of the ARRB? If so, what are they?**

   No.

3. **Are there any issues involving the ARRB from which you may have to disqualify yourself? If so, please explain.**

   No. I am unaware of any such issue.

4. **Have you been a party to any legal actions or administrative proceedings pertaining to access to, or disclosure of, federal records on the subject of the assassination of President Kennedy?**

   No.

II. ROLE AND RESPONSIBILITIES

1. **What particular qualifications and experience do you bring to the role of being a member of the ARRB?**

Primarily, I bring my background and experience as a lawyer and public official. I have twice been elected a section officer in the American Bar Association and was recommended for this nomination by the President of the American Bar Association. My experience as a lawyer includes three years in private practice and nine years as Solicitor General and Chief Deputy Attorney General in Minnesota. For 7 1/2 years I have been the senior appointed official in the Minnesota Attorney General's Office, responsible for the management and direction of an office of over 200 attorneys. I have handled countless sensitive projects and cases, arguing three cases before the United States Supreme Court and serving as legal counsel to two Minnesota Governors and to the Minnesota Legislature. I have played an active role within the National Association of Attorneys General, twice receiving major national awards from NAAG, twice chairing the Conference of Chief Deputies, and directing many of NAAG's management improvement initiatives. I teach Constitutional Law as an Adjunct Professor at the University of Minnesota Law School.

From my experience as Minnesota Chief Deputy Attorney General, I have considerable experience dealing with the kind of processes envisioned by the Act, including establishing new administrative procedures created by new statutes, working with a wide range of governmental agencies, resolving tough legal issues raised by new laws, applying confidentiality rules, administering open records laws, issuing subpoenas, conducting government public hearings, and making difficult public decisions that significantly impact citizens. I understand the separation of powers issues that could be raised in the context of this Act. Furthermore, I have had no prior involvement in any aspect of the Kennedy assassination or the assassination records. I would bring independent, objective judgment to the position.

I also have a strong interest in historical preservation. My primary undergraduate major was History, an area in which I graduated *summa cum laude* with honors. I authored a 220 page local history and study of immigration. My research included reviewing records at the National Archives. I have also provided legal representation to the Minnesota Historical Society and State Archivist for eight years.

I have worked in the Congress for the United States Senate on Senator Hubert Humphrey's staff and have worked in the federal judiciary as a federal law clerk. I have worked closely with the United States Department of Justice on a wide range of projects and cases.

2. **What do you consider to be your primary responsibilities and priorities as an ARRB member?**

I see our primary responsibilities as:

(1) Overseeing and directing the prompt collection from government offices of all Kennedy assassination records that have not yet been transmitted to the National Archives, and directing a prompt public disclosure of all appropriate records.

(2) Gathering input and information from the public to ensure that concerns are addressed and that all appropriate records are requested and received.

(3) Applying in a fair manner the standards set forth in the Act regarding postponement of the release of records, keeping in mind the strong Congressional intent expressed in the Act favoring public disclosure.

(4) Assuring the Congress and the American public that information about the Kennedy assassination is not being hidden by any branch or agency of the federal government.

(5) As the lawyer on the panel, I believe that I have additional responsibilities to help ensure that appropriate and fair processes are established to guide the collection and release of records, that legal questions are addressed promptly and thoroughly, and that any necessary investigations are handled properly.

3. **How do you envision your relationship and responsibilities -- as an ARRB member -- to (a) the President, (b) the Congress, and (c) other executive branch agencies?**

(a) My responsibilities to the President are to provide a regular and detailed accounting of the work of the ARRB, and to provide concise and thorough postponement and release decisions in order to expedite the President's review of ARRB decisions affecting executive branch agencies.

Although ARRB is an independent agency, it is important to have a smooth working relationship with the President in order to ensure that the process established by Congress works well.

(b) My responsibilities to the Congress are to implement the law promptly and in the manner intended by Congress, to provide on a regular basis a detailed accounting of the work of the ARRB, and to respond appropriately to all Congressional inquiries and requests.

(c) My responsibilities toward and relationship with other executive branch agencies are to work cooperatively but firmly in ensuring early transmittal of documents to the National Archives. My responsibility includes working with the agencies to ensure a complete understanding of agencies' responsibilities under the law and fairly and independently reviewing agencies' requests to postpone disclosure of any records.

4. **How do you view the job of ARRB Executive Director? What role do you anticipate playing in the selection of ARRB Executive Director and staff?**

I consider the Executive Director to be the ARRB's chief administrator and coordinator of all functions of the panel. The Executive Director should be the day-to-day administrator of the staff and the administrator of all activities of the ARRB. I envision the Executive Director playing an important coordination role with other federal agencies.

I anticipate playing a role in the selection of the Executive Director. The position is critical to the effectiveness of the ARRB and I would like to use my considerable recruiting and hiring experience to help choose the best available staff.

III. POLICY ISSUES

1. **Have you made any public statements -- oral or written -- regarding the assassination of President Kennedy or the public availability of government records regarding this assassination? Please explain, and provide copies of any relevant material.**

I have made no written or oral public statements regarding the Kennedy assassination or the assassination records.

2. **Members of the ARRB will be examining security classified records with a view to their declassification and public disclosure, in whole or in part, at some time in the future.**

   a) **Can you describe what prior experience you have had, if any, with using or examining security classified records of the Federal Government?**

   I have no prior experience with using or examining security classified records of the federal government. I have, however, considerable experience handling documents protected by state confidentiality laws.

   b) **What do you think of our current security classification system? For example, would you say it operates well, has integrity, and serves the public interest?**

   The security classification system has generally well served the public interest throughout the period in which the Cold War placed significant constraints on sharing information. We have entered a new era and my understanding is that a comprehensive review is now underway that will likely result in significant revisions and the development of a less restrictive system of security classification. Such a comprehensive review is a positive development.

3. **One of the duties of the ARRB will be to determine what constitutes an "assassination record." What criteria do you think should be used to make this determination?**

The definition of "assassination records" will be one of the most important and significant decisions of the ARRB. It is important to understand better the universe of potential records before the difficult decision on how to define "assassination records." Preliminarily, and without such an understanding yet, I would favor a broad definition because (1) a broad definition will help assure the American public that all relevant records are being reviewed and disclosed, and (2) I believe that is the intent of Congress as expressed in the Act.

It may well be difficult to define "assassination records" in a manner which will cover all relevant documents, and if so, it may be necessary to establish a mechanism by which a case-by-case determination can be made regarding the linkage between the assassination and a particular document.

IV. RELATIONS WITH CONGRESS

1. **Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress, if confirmed?**

Yes.

2. **Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress, or its duly authorized agent, if confirmed?**

Yes.

JRTPERS.AA7

Office of General Counsel

Kermit Hall Article

FROM: Claudette

Voice: (703) 874-
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DATE: 4/4/97

ADDRESSEE: Barbara
ORGANIZATION:

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ARTICLE: THE VIRULENCE OF THE NATIONAL APPETITE FOR BOGUS REVELATION

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Introduction

The specter of conspiracy has haunted Americans throughout the second half of the twentieth century. n1 In the 1950s, Senator Joseph [*2] McCarthy's Communist conspiracy theory - the "second Red Scare" - traumatized the nation and destroyed lives. n2 More recently, David Irving's explanation of the Holocaust as an enormous historical fabrication n3 has defied logic and distorted reality. n4 Even Abraham Lincoln rests uneasily in his grave, as theorists of his murder advance plots so tangled that only the exhumation of John Wilkes Booth's bones can unravel them. n5

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n1. This phenomenon is not unique to the modern era. There are many comprehensive historical accounts of the specter of conspiracy in America. See, e.g., Virginia Carmichael, Framing History: The Rosenberg Story and the Cold War (1993) (analyzing and tracing the "politically motivated production of the official Rosenberg story and the historical and cultural critiques performed by its re-presentation in literature, drama and the visual arts"); David Brion Davis, The Slave Power Conspiracy and the Paranoid Style (1969) (discussing the theory that slaveowners conspired against the rest of the country); The Fear of Conspiracy: Images of Un-American Subversion from the Revolution to the

Present xxiii (David Brion Davis ed., 1971) ("The main purpose of this book is to use images of conspiracy and subversion as a means of studying American tensions, values, and expectations ...."); Richard Hofstader, The Paranoid Style in American Politics and Other Essays (1965) (examining the popularity of conspiracy theories); George Johnson, Architects of Fear: Conspiracy Theories and Paranoia in American Politics (1983) (demystifying conspiracy theorists and the objects of their theories); Donald J. Lisio, The President and Protest: Hoover, Conspiracy, and the Bonus Riot (1974) (arguing that the proliferation of conspiracy theories causes "gross distortions" in our understanding of the Bonus Riot and Hoover's presidency); Michael Sayers & Albert E. Kahn, The Great Conspiracy: The Secret War Against Soviet Russia (1946) (recounting the history of espionage in the Soviet Union from 1917 to 1945).

n2. David M. Oshinsky, A Conspiracy So Immense: The World of Joe McCarthy 102 (1983) (chronicling the life of Joseph McCarthy and the effects of the "second Red Scare" on the American psyche).

n3. See David Irving, Goebbels (1996); see also Arthur R. Butz, The Hoax of the Twentieth Century: The Case Against the Presumed Extermination of European Jewry 8 (1976) (calling the Holocaust a hoax and a "monstrous lie").

n4. See Deborah E. Lipstadt, Denying the Holocaust: The Growing Assault on Truth and Memory (1993) (examining and discrediting the arguments of Holocaust deniers).

n5. See Edward Colimore, The Search for Lincoln's Assassin, Phila. Inquirer, Apr. 28, 1992, at C1, available in LEXIS, Nexis Library, Newspaper File; Dentist Examines Lincoln Slaying: Seeks to Exhume Body Buried As Booth's, Compare Teeth with Record, St. Louis Post-Dispatch, Apr. 18, 1994, (Illinois) at 6, available in 1994 WL 8195597; Hmm, How Do We Really Know Who's Buried in Grant's Tomb?, Wash. Times, Nov. 14, 1992, at C2, available in LEXIS, Nexis Library, Newspaper File; Our American Corpses, Wash. Times, Mar. 18, 1992, at F2, available in LEXIS, Nexis Library, Newspaper File; Who's Buried in John Wilkes Booth's Tomb?, U.P.I., Sept. 26, 1991, available in LEXIS, Nexis Library, UPI File.

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These are compelling examples of the American appetite for intrigue, but no other event in twentieth-century American history has generated such persistent notions of conspiracy as the assassination of President John F. Kennedy. More than four hundred books have been published on the subject; n6 a major newsletter provides a continu- [*3] ing flow of new theories about the assassination; n7 and a national organization, the Coalition on Political Assassinations, meets annually to debate the murder. n8 Oliver Stone elevated the idea of conspiracy to epic proportions in the film JFK. n9 That movie claims, among other things, that Lee Harvey Oswald did not act alone; rather, he was part of a plot hatched by the Central Intelligence Agency (CIA) in collaboration with organized crime, the Federal Bureau of Investigation (FBI), and other elements of the American government. n10 Stone's follow-up to JFK, Nixon, n11 echoes this theme, intimating a connection between the Cuban burglars of the Watergate complex and the assassination of President Kennedy. n12

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n6. See, e.g., Robert Sam Anson, "They've Killed the President!": The Search for the Murderers of John F. Kennedy (1975) (calling for a new investigation of JFK's assassination); G. Robert Blakey & Richard Billings, The Plot to Kill the President (1981) (explaining the conclusion of the Select Committee on Assassinations that organized crime was behind the plot to kill JFK); John Davis, Mafia Kingfish: Carlos Marcello and the Assassination of John F. Kennedy (1989) (examining the theory that the New Orleans Mafia was behind JFK's assassination); Edward Jay Epstein, The Assassination Chronicles: Inquest, Counterplot, and Legend (1992) [hereinafter Epstein, Trilogy] (trilogy examining the Warren Commission Report, the investigation conducted by New Orleans District Attorney Jim Garrison, and the life of Lee Harvey Oswald); Robert J. Groden & Harrison Edward Livingstone, High Treason: The Assassination of President John F. Kennedy: What Really Happened (1989) (claiming that the CIA, organized crime, and right-wing politicians killed JFK); Henry Hurt, Reasonable Doubt (1985) (concluding that Oswald did not act alone); Mark Lane, Rush to Judgment (1966) (arguing that the Warren Commission admitted hearsay and ignored important evidence); David S. Lifton, Best Evidence: Disguise and Deception in the Assassination of John F. Kennedy (1981) (concluding that a second bullet was removed from JFK's head); John Newman, Oswald and the CIA (1995) (arguing that the CIA was interested in Oswald since 1959, and that, "whether witting or not, Oswald became involved in CIA operations"); Gerald L. Posner, Case Closed: Lee Harvey Oswald and the Assassination of JFK (1993) (concluding that Oswald acted alone); Frank Ragano & Selwyn Raab, Mob Lawyer (1994) (identifying Mafia bosses who planned JFK's assassination); Harold Weisberg, Frame-Up: The Martin Luther King/James Earl Ray Case (1971) (drawing a parallel between the JFK conspiracy and the "framing" of James Earl Ray in Dr. King's murder).

n7. See Open Secrets (Coalition on Political Assassinations, Washington, D.C.), Aug. 1994.

n8. See John Hanchette, JFK Conspiracy Theorists Announce October Convention, Gannett News Service, Sept. 26, 1994, available in 1994 WL 11247865; Washington Daybook; Today's Headliners, Wash. Times, Oct. 20, 1995, at A11.

n9. JFK (Warner Bros. 1991).

n10. See David Ansen, A Troublemaker for Our Times, Newsweek, Dec. 23, 1991, at 50; Robert Brustein, JFK, New Republic, Jan. 27, 1992, at 26, available in LEXIS, Nexis Library, Magazine File; Richard Corliss, Who Killed JFK?, Time, Dec. 23, 1991, at 66, available in 1991 WL 3116696; Stuart Klawans, JFK, Nation, Jan. 20, 1992, at 62, available in LEXIS, Nexis Library, Magazine File; John Simon, JFK, Nat'l Rev., Mar. 2, 1992, at 54, available in LEXIS, Nexis Library, Magazine File; Jay Carr, Oliver Stone's "JFK" Fights the Right Fight, Boston Globe, Dec. 20, 1991, Arts & Film at 53, available in 1991 WL 7514478; Renee Loth, Oliver Stone's "JFK" Reopens Old Wounds in a Society That Often Views Life Through Pop Culture: Film May Force Reexamination, Boston Globe, Dec. 22, 1991, at A19, available in 1991 WL 7514694; Kenneth Turan, "JFK": Conspiracy in the Cross Hairs, L.A. Times, Dec. 20, 1991, at F2, available in 1001 WL 2190825; Crossfire (CNN television broadcast, Dec. 23, 1992), available in LEXIS, Nexis Library, Transcript File.

n11. Nixon (Walt Disney 1995).

n12. See Stanley Kauffmann, Cast of Character, New Republic, Jan. 22, 1996, at 26; Christopher Sharrett, Nixon, USA Today, May 1996, Magazine at 49; Jay

Carr, Baring the Heart of Nixon, Boston Globe, Dec. 20, 1995, Arts & Film at 33, available in 1995 WL 5966891; Stephen Hunter, Resurrecting Nixon, Balt. Sun, Dec. 20, 1995, at 1E, available in LEXIS, News Library, Majpap File; Barbara Shulgasser, "Nixon': It Has All the Charm of a Lab Rat, San. Fran. Examiner, Dec. 20, 1995, at C1, available in LEXIS, Nexis Library, Newspaper File; Kenneth Turan, "Nixon,' the Enigma, L.A. Times, Dec. 20, 1995, at F1, available in LEXIS, News Library, Lat File; Crossfire (CNN television broadcast, Dec. 27, 1995), available in LEXIS, Nexis Library, Transcript File.

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This Article addresses the Kennedy murder, generally; the work of the Assassination Records Review Board, primarily; n13 and issues of secrecy and openness in government, specifically. In short, the Article considers the competing values of openness and secrecy in government. n14 Gaining access to secret documents is vital, but one must consider the cost of broken confidences to our security. A sense of conflict between these views inspired this Article.

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n13. The author sits as a member of the Assassination Records Review Board. The views expressed herein are solely those of the author. They do not represent the views of the other members of the Board.

The other members of the Board are the Honorable John R. Tunheim, United States District Judge, District of Minnesota; Henry Graff, Professor Emeritus, Columbia University; William Joyce, Rare Books Librarian, Firestone Library, Princeton University; and Anna K. Nelson, Adjunct Professor of History, American University.

The Assassination Records Review Board will hereinafter be referred to as the "JFK Board" or the "Board."

Throughout this Article, references are made to the views of the various intelligence agencies. These references are based upon the author's knowledge of these representations made to the Assassination Records Review Board, the context of which remains classified.

n14. See generally Benjamin S. DuVal, Jr., The Occasions of Secrecy, 47 U. Pitt. L. Rev. 579, 583 (1986) (arguing that secrecy issues "present a fundamentally different problem in terms of first amendment theory than those that have been central to the development of first amendment jurisprudence" and that "society is distinctly ambivalent about the benefits of increased knowledge").

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I. The Warren Commission

The Warren Commission and its report stand at the center of almost all Kennedy conspiracy theories. n15 A year after the assassination, the Report was issued by seven sober-minded Americans, headed by Chief Justice Earl Warren. n16 Initially, the Report, which concluded that Oswald was the lone assassin, n17 received strong support. Polling data indicates that prior to the Report's

release, only twenty-nine percent of the public believed that Oswald was solely responsible for the assassination of President Kennedy; following its release a year later, in 1964, that number increased to eighty-seven percent. However, two years later, in 1966, only thirty-six percent of Americans indicated they [*5] believed the Report. n18 By the time JFK opened in the movie houses of America, n19 public confidence in the Commission's Report had sunk even further, with about seventy percent of Americans concluding that Oswald did not act alone. n20 The movie, therefore, tapped a deep wellspring of distrust of the Report rather than, as is sometimes implied, n21 fostered it.

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n15. See President's Commission on the Assassination of President Kennedy, Report of the President's Commission on the Assassination of President John F. Kennedy (1964) [hereinafter Warren Commission Report].

n16. The members of the Warren Commission were Chief Justice Earl Warren, Senator Richard B. Russell, Senator John Sherman Cooper, Representative Hale Boggs, Representative Gerald R. Ford, Allen W. Dulles, and John J. McCloy. See id. at v.

n17. "On the basis of the evidence before the Commission it concludes that Oswald acted alone." Id. at 22.

n18. These figures are based on CBS and Gallup polling data recapitulated in a poll released a week before the thirtieth anniversary of the assassination. See Nine Out of 10 Americans Doubt Oswald Acted Alone, Reuters, Nov. 15, 1993, available in LEXIS, News Library, Wires File; see also Max Holland, The Key to the Warren Report, Am. Heritage, Nov. 1995, at 50, 52 ("Prior to [the Report's] release, a Gallup poll found that only 29 percent of Americans thought Oswald had acted alone, afterward 87 percent believed so.").

n19. See JFK, supra note 9.

n20. See 82% in Poll Say the Truth Wasn't Told in JFK Death: Seven of 10 Suspect There Was a Conspiracy, Buff. News, Nov. 22, 1993, at 1, available in 1993 WL 6126092 ("Seven in 10 Americans suspect a conspiracy, and those who were young on November 22, 1963, are especially likely to be among the 82 percent who believe the truth has not been told. In keeping with many recent polls that show Americans are distrustful toward government, 78 percent think there was an official coverup."). Indeed, there is now a much more conspiracy-minded attitude toward the assassination than there was even 15 years ago. See id.

n21. See, e.g., Brustein, supra note 10 ("Viewers of JFK ... might find themselves shaken in their views of government, society, the media.").

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Events between 1964 and 1992 did much to undermine trust in the Warren Commission Report. An assassination research community quickly appeared, raising troubling questions about the Report and propagating theories of conspiracy. n22 Books entitled Whitewash, n23 Contract on America, n24 Conspiracy, n25 and Rush to Judgment n26 eroded the credibility of the Commission's findings. n27 President Kennedy's murder, moreover, was only one of several prominent political killings. Assassins also gunned down Robert F. Kennedy, Martin

Luther King, Jr., and Malcolm X and gravely wounded Governor George C. Wallace. n28 [*6] At the same time, the American government resorted to deception to disguise its policy failures. n29 The nation fought and lost a bloody conflict in Southeast Asia - an undeclared war fostering doctored casualty reports; n30 secret missions into Cambodia and Laos; n31 purported attacks on the destroyers, Maddox and C. Turner Joy; n32 and President Richard Nixon's "secret plan" to end the war. n33 The plan took five years, cost many thousands of additional American and Vietnamese [*7] lives, and left our former allies in the South to the tender mercies of their northern opponents. n34

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n22. See Posner, supra note 6, at 412-19 (describing the "network of amateur sleuths" who checked the accuracy of the Warren Commission Report and challenged its conclusions).

n23. Harold Weisberg, Whitewash (1965) (stating that the Warren Commission did not consider any alternatives to Oswald as sole assassin).

n24. David E. Scheim, Contract on America: The Mafia Murders of John and Robert Kennedy 263 (1983) (concluding that the Mafia killed President Kennedy).

n25. Anthony Summers, Conspiracy 523 (1980) (calling for a new investigation).

n26. Lane, supra note 6.

n27. See Weisberg, supra note 23, at 189 ("In writing this book, the author has had but one purpose. That was to show that the job assigned to and expected of the President's Commission on the Assassination of John F. Kennedy has not been done."); Scheim, supra note 24, at 2-3 (finding that "evidence that established [Jack Ruby's] criminal ties has been repeatedly suppressed or distorted by the Warren Commission"); Summers, supra note 25; Lane, supra note 6, at 378 ("The Report of the President's Commission on the Assassination of President Kennedy is less a report than a brief for the prosecution.").

n28. See D'Army Bailey, Mine Eyes Have Seen: Dr. Martin Luther King, Jr.'s Final Journey (1993) (providing a pictorial account of King's final journey to Memphis); George Breitman et al., The Assassination of Malcolm X (1976) (arguing that the CIA and FBI participated in the assassination of Malcolm X); Karl Evanzz, The Judas Factor: The Plot to Kill Malcolm X (1992) (concluding that government agencies were involved in the assassination); Gerold Frank, An American Death: The True Story of the Assassination of Dr. Martin Luther King, Jr. (1972) (concluding that James Earl Ray alone killed King); Michael Friedly, Malcolm X: The Assassination (1992) (concluding that Muslims killed Malcolm X); Robert Blair Kaiser, "R.F.K. Must Die!" (1970) (exploring various conspiracy theories); Three Assassinations: The Deaths of John & Robert Kennedy and Martin Luther King (Janet M. Knight ed., 1971) (providing "a factual account of the assassinations" based on "Facts on File, the press, and U.S. government studies"); Stephan Lesher, George Wallace (1994) (describing Arthur Bremer's attempt on Wallace's life); Philip H. Melanson, The Robert F. Kennedy Assassination 13 (1991) (concluding that Sirhan Sirhan was "hypnotically programmed to attack [Robert F.] Kennedy"); Philip Melanson, Who Killed Martin Luther King? (1993) (calling for an investigation of possible CIA and FBI involvement); Dan E. Moldea, The Killing of Robert F. Kennedy 323 (1995)

(concluding that Sirhan Sirhan assassinated Robert F. Kennedy to prove "that he still had his nerve"); William W. Turner & John G. Christian, The Assassination of Robert F. Kennedy (1978) (claiming that there was a conspiracy); Weisberg, supra note 6 (concluding that James Earl Ray was framed for the assassination of Martin Luther King, Jr.).

n29. Regarding the government's use of intelligence materials in the Vietnam War and the bogus nature of much of the reporting about the War, see Sam Adams, War of Numbers (1994); Edward S. Herman & Richard B. DuBoff, America's Vietnam Policy: The Strategy of Deception 79 (1966); John M. Newman, JFK and Vietnam: Deception, Intrigue, and the Struggle for Power 206-22 (1992); John Prados, Presidents' Secret Wars 239-325 (1986); L. Fletcher Prouty, JFK: The CIA, Vietnam, and the Plot to Assassinate John F. Kennedy 42-117 (1992); Peter Dale Scott, The War Conspiracy: The Secret Road to the Second Indochina War 51-75 (1972); Neil Sheehan et al., The Pentagon Papers As Published by the New York Times 241-78 (1971); Sedgewick Tourison, Secret Army, Secret War (1995).

With regard to false "body counts," see Loch K. Johnson, America's Secret Power 60-62 (1989); Gabriel Kolko, Anatomy of a War 195-96 (1985); Newman, supra, at 288-89, 298-99.

n30. See Vance Hartke, The American Crisis in Vietnam 100-02 (1968); Herman & DuBoff, supra note 29, at 122-23; Seymour Hersh, Cover-Up (1972); Kolko, supra note 29, at 195-96; Major Problems in the History of the Vietnam War (Robert J. McMahon ed., 2d ed. 1995); Newman, supra note 29, at 229-34.

n31. See Noam Chomsky, At War with Asia 117-258 (1970); Credibility Gap: A Digest of the Pentagon Papers 54-64 (Len Ackland compiler, 1972); Frances FitzGerald, Fire in the Lake 123, 264 (1972); Bruce Palmer, Jr., The 25-Year War 92, 95-116 (1984).

n32. See Theodore Draper, Abuse of Power 63-65 (1967); George C. Herring, America's Longest War 134 (3d ed. 1996); Robert S. McNamara & Brian VanDeMark, In Retrospect: The Tragedy and Lessons of Vietnam 132-34 (1995).

n33. See Herring, supra note 32, at 244-47; Stanley Karnow, Vietnam: A History 582-83 (1983).

n34. See Herring, supra note 32, at 282-83; Stanley I. Kutler, The Wars of Watergate 9-10, 80 (1990).

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The government's penchant for secrecy fueled the public's corrosively cynical view of politics and politicians. During the Watergate investigation, President Nixon proclaimed to the nation that he was "not a crook," n35 but he soon abandoned the Oval Office and joined his disgraced vice president n36 in private life. n37 In one of the great ironies of modern American politics, the instrument of Nixon's downfall was a secret recording system installed in the White House. n38 What was supposed to be a tool to record reliably the President's triumphs became the chief means of exposing the Watergate cover-up. n39

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n35. Question-and-Answer Session at the Annual Convention of the Associated Press Managing Editor's Association, Orlando, Fla., 1973 Pub. Papers 946, 956 (Nov. 17, 1973).

n36. Vice President Spiro T. Agnew resigned on October 10, 1973, after entering a plea of nolo contendre to a federal charge of tax evasion. See Kutler, supra note 34, at 397-98.

n37. See id. at 532, 540, 544-45, 547-50, 620.

n38. See id. at 452.

n39. See id. at 287, 314-15, 324-25, 368-69, 447-49.

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Under such circumstances, the Warren Commission's Report would have been subjected to reevaluation even if it had been compiled perfectly. Furthermore, because the Warren Commission labored at the height of the Cold War, n40 the Commissioners adopted a strategy that depended on implicit public trust. The Cold War environment combined with other circumstances to handicap the Warren Commission and eventually to erode that public trust in five significant ways.

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n40. See Holland, supra note 18, at 52.

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First, the Commission had access to an enormous amount of information not otherwise accessible to the American press and public. n41 This information was secret, top secret, and beyond, much of it compartmentalized cryptologic and signal intelligence material dealing with the Soviet Union, Cuba, and other foreign governments, such as Communist China. n42 Because of the enormous Cold War paranoia, as well as the requirement to maintain tight secrecy around the sources and methods used to collect this information, the Commission could not argue its case fully to the American people. When the research community asserted that the government itself had been im- [*8] plicated in the assassination, n43 the evidence that the Commission had used to discount such a possibility was available only to the government charged with having abetted the crime. The cost of secrecy was uncertainty, an uncertainty that turned to cynicism, much of it based on theories about the assassination that gained legitimacy simply because they could not be tested against the appropriate evidence.

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n41. See Hurt, supra note 6, at 432-33.

n42. See Holland, supra note 18, at 64.

n43. See, e.g., Harold Weisberg, Whitewash II: The FBI-Secret Service Coverup 125 (1996) (concluding that "the FBI and the Secret Service are not innocent" in the Warren Commission investigation).

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Second, although the Commission had access to some high-quality intelligence information, it did not receive everything. The CIA, FBI, and Attorney General Robert F. Kennedy failed to reveal information that would have helped identify a motive for a conspiracy. n44 The failure to disclose all information to the Commission was particularly damaging because of the distinguished character of its seven members. n45 Its chairman was Chief Justice Earl Warren, a person noted for probity and fairness. n46 The Commission was really divided into two subgroups. Four of the members - Warren, Hale Boggs, Gerald Ford, and John Sherman Cooper - had relatively little experience with intelligence matters; however, the other three - Richard Russell, Allen Dulles, and John J. McCloy - were fully conversant with national security issues and the sources and methods used by the intelligence services. n47

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n44. See Warren Hinckle & William W. Turner, Deadly Secrets: The CIA-Mafia War Against Castro and the Assassination of JFK 16-17, 264-71, 403 (1992) [hereinafter Hinckle & Turner, Deadly Secrets]; Warren Hinckle & William W. Turner, The Fish Is Red: The Story of the Secret War Against Castro 228-31, 336 (1981) [hereinafter Hinckle & Turner, The Fish Is Red]; Newman, supra note 6; Prados, supra note 29, at 211-17; Holland, supra note 18, at 62.

n45. See supra note 16.

n46. President Kennedy wrote that Warren had "borne [his] duties and responsibilities with unusual integrity, fairness, good humor and courage." Jim Marrs, Crossfire: The Plot That Killed Kennedy 463 (1989) (quoting letter from President John F. Kennedy to Chief Justice Earl Warren).

n47. See Holland, supra note 18, at 52.

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The Commission's success depended, in part, on the ability of the three intelligence-savvy members to raise the right questions. They seem not to have done so. For example, the Commission never discovered the existence of Operation MONGOOSE, n48 a covert scheme concocted by President Kennedy and his brother, Attorney General [*9] Robert F. Kennedy, to assassinate Fidel Castro with the help of organized crime. n49 When these plans reached the public several years later, critics of the Warren Commission had a field day. n50 The Commission's conclusion that a foreign government lacked a sufficient motive to murder the President now crumbled. n51 Indeed, the Commission looked silly and, even worse, to be a part of the plot because its critics could plausibly assert that its distinguished members should have guessed at such a possibility.

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n48. See Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, Alleged Assassination Plots Involving Foreign Leaders, S. Rep. No. 94-465, at 139-46 (1975) [hereinafter Church Committee]. Operation MONGOOSE was initiated by the United States government in 1962 as a covert action program to overthrow Castro, the Cuban leader. See id.

n49. See Church Committee, supra note 48, at 139-46; Hinckle & Turner, The Fish Is Red, supra note 44, at 20, 111-26; Holland, supra note 18, at 62.

n50. Even President Johnson expressed his belief that Castro could have planned Kennedy's assassination in retaliation. See Hurt, supra note 6, at 31 (citing interview with Lyndon B. Johnson, The CBS Evening News with Walter Cronkite (CBS television broadcast, Apr. 25, 1975)).

n51. See id.

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Third, in appointing the Commission, President Lyndon Johnson had one goal: to check rumors that the assassination was a Communist plot. n52 Johnson appropriately feared that Kennedy's murder could precipitate World War III. n53 Oswald's time in the Soviet Union and his trip to visit the Soviet Embassy in Mexico City just weeks before the murder pointed to Communist intrigue. n54 Such concerns were amplified because Oswald had identified himself with the Fair Play for Cuba Committee, an organization openly supportive of Castro and sharply critical of Kennedy's Cuba policy. n55 Thus, the Commission was under enormous pressure to produce an answer that discounted foreign influence. n56

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n52. See Holland, supra note 18, at 52.

n53. See id. at 56-57.

n54. See id. at 57.

n55. See id. at 56; see also Warren Commission Report, supra note 15, at 290-92 (finding that Oswald purportedly distributed pamphlets on behalf of the Fair Play for Cuba Committee, but also finding that Oswald exaggerated the extent of his involvement).

n56. See Holland, supra note 18, at 57.

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Fourth, as the science of forensic analysis has progressed over the past three decades, questions have inevitably arisen about the Warren Commission's conclusions involving the President's body, n57 the alleged murder weapon, n58 the number and sequencing of the shots [*10] fired at the President, n59 and the condition of the so-called "magic bullet," which passed through the President and Governor John Connally with a minimum amount of damage. n60 We now know that the autopsy performed on the President was problematic, both in technique and organization. n61 Yet, the Commission relied on it. On other matters, new forms of analysis have been generally supportive of the Commission's findings; although it now appears that the sequencing of the shots fired in Dealey Plaza was somewhat different from that described by the Commission. n62 Ironically, even when the latest techniques cor- [*11] roborate the Commission's findings, the result has not been greater confidence in those findings, but rather, a belief that the Commission got it wrong instead of almost getting it right. n63

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n57. See Warren Commission Report, supra note 15, at 19 ("President Kennedy was first struck by a bullet which entered at the back of his neck and exited through the lower front portion of his neck, causing a wound which would not necessarily have been lethal. The President was struck a second time by a bullet which entered the right-rear portion of his head, causing a massive and fatal wound.").

n58. See id. at 81 (stating that the rifle found on the sixth floor of the Texas School Book Depository "was identified by the FBI as a 6.5-millimeter model 91/38 Mannlicher-Carcano rifle").

n59. See id. at 111 (finding that "(a) one shot passed through the President's neck and then most probably passed through the Governor's body, (b) a subsequent shot penetrated the President's head, (c) no other shot struck any part of the automobile, and (d) three shots were fired.... The evidence is inconclusive as to whether it was the first, second, or third shot which missed.").

n60. See id. at 79 ("A nearly whole bullet was found on Governor Connally's stretcher at Parkland Hospital after the assassination.").

n61. See Groden & Livingstone, supra note 6, at 3.

n62. See Charles J. Sanders & Mark S. Zaid, The Declassification of Dealey Plaza: After Thirty Years, a New Disclosure Law at Last May Help to Clarify the Facts of the Kennedy Assassination, 34 S. Tex. L. Rev. 407 (1993).

The so-called "magic bullet" or "single bullet" theory has been the subject of intense debate. See, e.g., Edward Jay Epstein, Inquest: The Warren Commission and the Establishment of Truth 115-26 (1966) (criticizing the single bullet theory as based on a "misinterpretation" of ballistics testimony, the "extremely tenuous findings of the wound ballistics test," and the omission of conflicting testimony); Marshall Houts, Where Death Delights: The Story of Dr. Milton Helpern and Forensic Medicine 62-63 (1967) (concluding that a single bullet could not have penetrated seven layers of "tough human skin" in addition to soft tissue and bones); Hurt, supra note 6, at 61-86 (arguing that results of the spectrographic examination and neutron activity analysis did not support the single bullet theory); Michael Kurtz, Crime of the Century 175-76, 180-81 (1982) (criticizing the single bullet theory in light of the condition of the bullet and the deficiencies in the neutron activity analysis tests); Lane, supra note 6, at 69-80 (concluding that the angles of impact and the condition of the bullet found at Parkland Hospital invalidated the single bullet theory); Raymond Marcus, The Bastard Bullet: A Search for Legitimacy for Commission Exhibit 399, 1-77 (1966) (concluding that bullet 399 "was never fired at any human target" and that the bullet was "planted" on the hospital stretcher); Marrs, supra note 46, at 368-71 (concluding that findings from Kennedy's autopsy conflicted with the single bullet theory); Sylvia Meagher, Accessories After the Fact: The Warren Commission, the Authorities, and the Report 27-35, 137, 167-70, 461 (1967) (concluding that the single bullet theory is weak because, of the three doctors whose testimony supports the theory, one retracted his original opinion, the second qualified his testimony, and the third was never shown the Zapruder film or the stretcher bullet); Bonar Menninger, Mortal Error: The Shot That Killed JFK 29-43 (1992) (arguing that the single bullet theory is inconsistent

with eyewitness accounts and photographic evidence); F. Peter Model & Robert J. Groden, JFK: The Case for Conspiracy 61-77 (1977) (concluding that the angle of impact and the pristine condition of the bullet made the single bullet theory impossible); Posner, supra note 6, at 317, 326-35, 474, 477-79 (relying on "the latest computer and film-enhancement technology" to conclude that a single bullet could cause both Kennedy's and Connally's wounds, and that a single bullet could have been fired from the sixth floor of the Texas School Book Depository); Howard Ruffman, Presumed Guilty 53, 131-48, 226 (1975) (concluding that bullet 399 did not cause Kennedy's injuries); Summers, supra note 25, at 67-71 (concluding that the pristine condition of the bullet invalidated the single bullet theory); Josiah Thompson, Six Seconds in Dallas: A Micro-Study of the Kennedy Assassination 9, 30, 38, 56, 59-71, 75, 77, 196, 201-09, 213-14 (1967) (concluding that the single bullet theory is wrong because none of the shots missed and because the bullet did not go all the way through Kennedy's neck); Luis Alvarez, A Physicist Examines the Kennedy Assassination Film, 44 Am. J. Physics 813-19 (1976) (using motions of Zapruder's camera to determine the number of shots fired); John Nichols, The Wounding of Governor John Connally of Texas: November 22, 1963, Md. St. Med. J., 58, 76-77 (Oct. 1977) (concluding that there was no bullet fragment embedded in Connally's thigh and that, therefore, the single bullet theory is wrong); Nova: Who Shot President Kennedy? (PBS television broadcast, June 19, 1988); The Warren Report (CBS News television broadcast, Part I, June 25, 1967).

. Recent analysis has discounted the acoustical evidence brought forward in the investigation of the House Select Committee on Assassinations. See infra note 63; Frontline: Who Was Lee Harvey Oswald? (PBS television broadcast, Nov. 16, 1993); Who Killed JFK: The Final Chapter (CBS television broadcast, Nov. 19, 1993).

n63. See House Select Committee on Assassinations, Report of the Select Committee on Assassinations, H.R. Rep. No. 95-1828 pt. 2 (1979). The House Select Committee on Assassinations concluded that the acoustical evidence established that a fourth shot was fired, and, therefore, there was a "high probability" that two gunmen fired at President Kennedy. Id. at 65-79. The Committee relied on analyses of a dictabelt recording of the Dallas police channels. See id. at 66-67. Bolt Beranek and Newman Inc. performed the first analysis and concluded - based on impulse patterns detected from the recording and an acoustical reconstruction of the assassination - that there was a 50% chance of a fourth shot from the Grassy Knoll. See id. at 66-72. Mark Weiss and Ernest Aschkenasy performed a follow-up analysis for the Committee and concluded that there was a 95% chance there was a shot fired from the Grassy Knoll. See id. at 72-75. But see Posner, supra note 6, at 240-42 (arguing that the House Select Committee misinterpreted the acoustical evidence, and, therefore, it "failed to establish the number of shots ... scientifically").

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Fifth, the Warren Commission Report - all 888 pages of it - was the work of lawyers, who not only dominated the Commission, but also its staff, the true authors of the Report. n64 The final document reads like a legal brief supporting the argument that Oswald committed the crime. The Report ought to have been a dispassionate analysis of all of the implications surrounding the murder, some of which the Commission itself had no knowledge. n65 Instead, the Report was a mound of facts that obscured the issue of Oswald's motivation and portrayed him as a sullen, dysfunctional, and troubled loner. n66 By

generating [*12] such a report, the Commission left open the opportunity for critics to complain that Oswald was a patsy who did not act alone. n67

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n64. See Holland, supra note 18, at 57-58.

n65. See id.

n66. For example, the Report made the following findings with regard to Oswald's character:

Many factors were undoubtedly involved in Oswald's motivation for the assassination, and the Commission does not believe that it can ascribe to him any one motive or group of motives. It is apparent, however, that Oswald was moved by an overriding hostility to his environment. He does not appear to have been able to establish meaningful relationships with other people. He was perpetually discontented with the world around him.

Warren Commission Report, supra note 15, at 423.

n67. See, e.g., Marrs, supra note 46, at 91-112 (examining Oswald's life and concluding that he was a spy for the United States); Posner, supra note 6, at 410-19 (describing the rash of criticism following the publication of the Warren Commission Report).

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The Report began to sink shortly after its release. n68 Researchers used its massive details to challenge the Commission's assumptions and findings. n69 However, the veil of secrecy thrown over the intelligence sources prevented the Commissioners and their defenders from rebutting their detractors. n70 The Commission's Cold War-induced commitment to secrecy inextricably linked its seven members to the intelligence community, and when that community subsequently came under attack, the Commission's reputation suffered as well. n71

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n68. In 1966 a public opinion poll revealed that Americans doubted the findings of the Warren Commission by a margin of three to five. The public's response is recounted in Meagher, supra note 62, at 463.

n69. See, e.g., Lane, supra note 6 (criticizing the Warren Commission's interpretation of objective evidence in the Kennedy assassination); Lifton, supra note 6 (discussing alternative interpretations of the Kennedy assassination evidence); Meagher, supra note 62 (comparing raw evidence of the Kennedy assassination with the presentation of that evidence in the Warren Commission Report).

n70. See supra notes 41-43 and accompanying text.

n71. See supra notes 40-47 and accompanying text.

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II. Other Investigations of the Assassination

Between 1964 and 1979, the American intelligence services were subjected to unparalleled scrutiny, much of it fueled by the CIA's and FBI's ties to the Watergate debacle and by revelations of domestic political surveillance by both agencies and the military intelligence services. n72 There were three other federal investigations that, in dealing with these issues, also addressed the Kennedy assassination: in the mid-1970s, the Rockefeller Commission, n73 the Pike Committee, n74 and [*13] the Church Committee n75 probed matters that touched on matters relating to the assassination and provided, most spectacularly, information about Operation MONGOOSE. n76 Operation MONGOOSE n77 involved CIA plans to destabilize the Cuban government, murder Castro and other leaders of hostile foreign nations, and relied on organized crime to assist with both. n78

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n72. For an example of the increased scrutiny of the CIA, see Victor Marchetti & John D. Marks, The CIA and the Cult of Intelligence 4-12 (1974). See generally Johnson, supra note 29 (discussing the problems of strategic intelligence in a democratic society).

n73. See Commission on CIA Activities Within the United States, Report to the President by the Commission on CIA Activities Within the United States (1975) [hereinafter Rockefeller Commission].

n74. The Pike Committee Report to the House Select Committee on Intelligence was never officially released. However, the Village Voice reprinted a substantial part of the Committee's findings. See The CIA Report the CIA Doesn't Want You to Read, Village Voice, Feb. 16, 1976 (Supp.); The Select Committee's Investigation Record, Village Voice, Feb. 16, 1976, at 72; The Select Committee's Oversight Experience, Village Voice, Feb. 23, 1976, at 60.

n75. See Church Committee, supra note 48.

n76. According to Loch K. Johnson, a series of articles by New York Times reporter Seymour Hersh in December 1974 prompted the creation of all three committees. See Johnson, supra note 29, at 3-4, 207-08. Hersh revealed, among other abuses, that the CIA had compiled files on over 10,000 U.S. citizens as part of Operation CHAOS. See id. at 3.

To investigate Hersh's claims, President Gerald R. Ford created the Rockefeller Commission, named after its chairman, Nelson Rockefeller. See Rockefeller Commission, supra note 73, at ix; see also Exec. Order No. 11,828, 3 C.F.R. 933-34 (1975). The Senate created a special committee chaired by Frank Church. See Church Committee, supra note 48, at 1-3 (stating the Church Committee's mandate and scope of investigation). Otis Pike, the chairman of the House's standing committee on intelligence, investigated for the House. See supra note 74. The Rockefeller Commission was to decide if the CIA had

violated 50 U.S.C. 403 (the statute creating the CIA), to determine whether there were adequate safeguards to prevent activities that violated the statute, and to make recommendations to the President and the director of the CIA. See id. at x. The Commission was to issue its final report within three months and to terminate one month after presenting its report. See Exec. Order No. 11,828, 3 C.F.R. 933-34. The Commission found, inter alia, that (1) the CIA's surveillance of mail between the United States and the Soviet Union was illegal; (2) the declared mission of Operation CHAOS to determine foreign influence on domestic dissidence was proper, but some activities exceeded the CIA's authority; (3) the infiltration of dissident groups exceeded its authority. See Rockefeller Commission, supra note 73, at 20-27.

The Church Committee was created by Senate Resolution 21 with a broad mandate to determine if there were any ""illegal, improper or unethical'" governmental intelligence activities. Church Committee, supra note 48, at 1 (quoting S. Res. 21, 94th Cong. (1975)).

In his introduction to the Interim Report, Senator Church explained that the Committee took up the investigation of assassination plots to continue the task of the Rockefeller Commission. See id. at 2. The Church Committee investigated murder plots against Lumumba, Castro, Trujillo, Diem, and Schneider. See id. at 4-5. With regard to Castro, it concluded that "United States Government personnel plotted to kill Castro from 1960 to 1965." Id.

n77. See supra note 48.

n78. See Church Committee, supra note 48, at 4-5. The Church Committee investigation revealed evidence that, from 1960 to 1965, the United States government used underworld figures and anti-Castro Cubans in a plot to kill Castro. See id.

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The most powerful of the post-Warren Commission inquiries was that made by the House Select Committee on Assassinations (HSCA), which in 1976 reopened the investigation that had been seemingly closed a dozen years earlier. n79 The Committee, chaired by Congressman Louis Stokes of Ohio, explored several controversial areas of John F. Kennedy's assassination, along with those of his brother, Rob- [*14] ert, and Reverend King. n80 The HSCA suffered from its own limitations, which are beyond the scope of this Article. n81 However, the HSCA's conclusions, which now seem to be in question, held that the Committee could not rule out a conspiracy to kill the President. n82 This finding directly challenged the Warren Commission. n83 For example, the HSCA believed that advanced acoustical techniques demonstrated that there had been more than one shooter in Dealey Plaza. n84 That analysis was subsequently repudiated, n85 but it was too late to counter the damage done to the Warren Commission's credibility.

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n79. See House Select Committee on Assassinations, Report of the Select Committee on Assassinations, H.R. Rep. No. 95-1828, pt. 2, at 9 (1979) [hereinafter House Select Committee].

n80. See id. at 10.

n81. See Hinckle & Turner, Deadly Secrets, supra note 44, at 271 (concluding that the HSCA suffered from lack of funding and that too much time had passed between the assassination and the Committee's investigation).

n82. See House Select Committee, supra note 79, at 95 (stating that the Committee believed "on the basis of the evidence available to it that President John F. Kennedy was probably assassinated as a result of a conspiracy").

n83. See id. at 104-09.

n84. See id. at 46-47, 65-79.

n85. See supra note 63.

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The HSCA exhausted its funds before it could complete its tasks and left mounds of records behind, including those dealing with organized crime, which the HSCA had subpoenaed, but was unable to process. n86 Today these materials are one of the chief objects of the Assassination Records Review Board.

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n86. See Hinckle & Turner, Deadly Secrets, supra note 44, at 271.

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III. The Assassination Records Review Board

The findings of these investigations inspired Oliver Stone's 1991 movie. n87 Without endorsing the movie's sensational conclusions, many members of Congress decided that the government's refusal to release classified information about the assassination promoted an unhealthy level of distrust of government. n88 As a result, Congress passed the John F. Kennedy Assassination Records Collection Act of 1992 n89 (the JFK Act or Act), which mandated the creation of a five-person Review Board. n90 The Act orders all federal agencies to assess whether they [*15] possess records relating to the assassination. n91 All records that an agency deems as not suitable for immediate release are subject to the Board's evaluation. n92 All records identified as relating to the assassination must be opened by October 26, 2017, with the exception of records that the President certifies for continued postponement. n93

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n87. See JFK, supra note 9. This 1991 Warner Brothers movie fictionally described the investigations into the John F. Kennedy assassination. See id.

n88. See H.R. Rep. No. 102-625, pt. 1, at 10 (1992) (stating that unjustified secrecy surrounding the assassination increases doubts and speculation and "fuels a growing distrust in the institutions of government").

n89. 44 U.S.C. 2107 (1994).

n90. The legislative history and congressional discussion of the need for the Board can be found in H.R. Rep. No. 102-625, pt. 1, at 6; H.R. Rep. No. 102-625, pt. 2, at 7 (1992); H.R. Rep. No. 103-587, at 2 (1994). The law establishing the Board is at 44 U.S.C. 2107(6) (1994).

n91. 44 U.S.C. 2107(5).

n92. Id. 2107(7)(j).

n93. See Sanders & Zaid, supra note 62, at 419; Harold C. Relyea & Suzanne Cavanaugh, President John F. Kennedy Assassination Records Disclosure: An Overview, Congressional Research Service Report for Congress 13-17 (1993) (discussing which particular records can be postponed from release).

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The Act defines several categories of information for which disclosure may be postponed, including national security, intelligence gathering, personal privacy, and presidential security. n94 However, because the Act declares a "presumption of immediate disclosure," the Board will not postpone the disclosure of material unless it is persuaded that there is "clear and convincing evidence" of some harm that outweighs the public's interest. n95

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n94. 44 U.S.C. 2107(6).

n95. Id. 2107(2)(a).

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Congress intended for the Board to oversee the opening to the public of a substantial amount of material - perhaps in the millions of pages. n96 Congress, therefore, clothed the Board with broad subpoena and other powers. n97 The Board is without precedent in American history, with powers that reach far beyond, for example, the Freedom of [*16] Information Act (FOIA). n98 The Board's only task is to make the public record of one epic historical event as complete as possible. n99

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n96. The congressional hearings surrounding the passage of the Act make clear that Congress expected the Review Board to exercise its powers in favor of opening materials. See The Assassination Materials Disclosure Act of 1992: Hearing Before the Senate Comm. on Gov'tal Affairs on S.J. Res. 282, 102d Cong. (1992) [hereinafter Assassination Materials Disclosure Act I]; Assassination Materials Disclosure Act of 1992: Hearings Before the Subcomm. on Econ. and Commercial Law of the House Comm. on the Judiciary on H.J. Res. 454, 102d Cong. (1992) [hereinafter Assassination Materials Disclosure Act II]; Assassination Materials Disclosure Act of 1992: Hearings Before the Legislation and Nat'l Sec. Subcomm. of the House Comm. on Gov't Operations on H.J. Res. 454, 102d Cong. (1992) [hereinafter Assassination Materials Disclosure Act III]; The Effectiveness of Public Law 102-526, the President John F. Kennedy Assassination Records Collection Act of 1992: Hearing Before the Legislation and Nat'l Sec. Subcomm. of the House Comm. on Gov't Operations, 103d Cong. (1993)

[hereinafter Effectiveness of Public Law 102-526]. The presumption was always to be in favor of opening a document rather than postponing it, thus making postponement the exception rather than the rule under the law. The Congress could only guess at the scope of materials to be opened.

n97. 44 U.S.C. 2107(7)(j).

n98. 5 U.S.C. 552 (1994). For a discussion of the history and operation of the Freedom of Information Act (FOIA), see generally Patrick J. Carome & Thomas M. Susman, American Bar Association Symposium on FOIA 25th Anniversary, 9 Gov't Info. Q. 223 (1992).

n99. See Sanders & Zaid, supra note 62, at 417-18.

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Although the Board's mission is clear, in executing the law it continually confronts the powerful tensions generated by the principled claims of openness and secrecy. To choose is to lead, and the Board, in attempting to break new ground in public disclosure, confronts some profound choices. Those choices have to be informed, moreover, by a shrewd assessment of the public's right to know, the public's need to have secrets vital to its national security protected, and the intelligence services' duty to safeguard those secrets and the sources and methods that produce them. n100

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n100. See DuVal, supra note 14, at 580-91.

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The Board's most difficult choices involve the disposition of classified intelligence documents. If a federal agency wants to open materials, it is not the Board's duty to prevent it. Rather, the Board's most important task is to decide what should not be opened immediately, in light of the Act's powerful admonition that there be "clear and convincing evidence" in favor of postponement. n101 In simplest terms, the Board has to decide whether materials, if opened, would reveal:

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n101. 44 U.S.C. 2107(6).

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(A) an intelligence agent whose identity currently requires protection;

(B) an intelligence source or method which is currently utilized, or reasonably expected to be utilized, by the United States Government and which has not been officially disclosed, the disclosure of which would interfere with the conduct of intelligence activities; or

(C) any other matter currently relating to the military defense, intelligence operations or the conduct of foreign relations of the United States, the disclosure of which would demonstrably impair the national security of the United States n102

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n102. Id. 2107(6)(1)(A), (B), (C).

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The Act provides other grounds for postponement. These include exposure of an informant to a "substantial risk of harm," n103 exposure of a person to an "unwarranted invasion of personal [*17] privacy," n104 the possibility of compromising a relationship between a United States government agent and a confidential source, n105 and the revelation of a security procedure used to protect the President. n106

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n103. Id. 2107(6)(2).

n104. Id. 2107(6)(3).

n105. Id. 2107(6)(4).

n106. Id. 2107(6)(5).

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IV. Openness and Secrecy - OriginalIntentions

History offers uncertain guidance about how the Board should weigh these grounds for postponement against the public's interest in knowing the facts about the assassination. The Framers of the United States Constitution did harbor doubts about government, doubts precipitated by their experience in the English Empire. n107 James Madison and Thomas Jefferson, among others, testified eloquently to the proposition that public accountability was an appropriate measure of the success of a republic. n108 Still, the Framers were also sophisticated statesmen who valued secrecy in fostering the public good. n109 For example, the Philadelphia Convention of 1787 conducted its deliberations in secret without any complete record of its debates. n110 The Constitution provides for the maintenance of an executive journal for both Houses of Congress and permits government to publish its accounts and revenues from "time to time," rather than on demand. n111 Even more fundamental was President George Washington's assertion of a broad degree of presidential discretion in dealing with foreign relations, war, and peace. n112 In certain circumstances, secrecy could be justified to attain ends superior to a completely in- [*18] formed public. Indeed, the Constitution's Preamble declares that insuring "domestic Tranquility" and providing for the "common defence" are objectives equal to securing the "Blessings of Liberty." n113

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n107. See generally 9 James Madison, The Writings of James Madison (Gaillard Hunt ed., 1910) (photo. reprint 1971) (discussing how the Framers of the Constitution were affected by their prior experiences with the English).

n108. Madison wrote, "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives." Id. at 103. Jefferson stated: "No ground of support of the Executive will ever be so sure as a complete knowledge of their proceedings by the people; and it is only in cases where the public good would be injured, and because it would be injured, that proceedings should be secret." Thomas Jefferson: Word for Word 409 (Maureen Harrison & Steve Gilbert eds., 1993).

n109. See Madison, supra note 107, at 104.

n110. See Thornton Anderson, Creating the Constitution 8-12 (1993); see also William Peters, A More Perfect Union 22-38 (1987) (quoting Thomas Jefferson: "I am sorry they begin their deliberations by so abominable a precedent as that of tying up the tongues of their members.").

n111. U.S. Const. art. I, 5, cl. 3.

n112. See Refusal by President George Washington to Submit Confidential Correspondence with John Jay to the House of Representatives, March 30, 1796, in William M. Goldsmith, The Growth of Presidential Power 418-20 (1984).

n113. U.S. Const. preamble. The Preamble to the Constitution states in full:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Id.

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On the question of original intention, the evidence is mixed. Secrets were at once bad and useful, openness was an object to be pursued, but not at all costs. Since 1787, the government has become more rather than less accountable, its secrets more rather than less readily accessible to its citizens. n114

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n114. See generally Daniel N. Hoffman, Governmental Secrecy and the Founding Fathers: A Study in Constitutional Controls (1981) (stating that judicial doctrines and legislative controls on political speech and publication have

toughened since 1787).

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V. Openness and Secrecy - FOIA

For more than 190 years, the American public did not have a legal right to gain access to information about its government. n115 All of that changed, however, in 1966 when President Lyndon Johnson signed FOIA n116 and thereby altered the historical relationship between the federal government and the public. n117 FOIA presumes that government information is public information and is implemented by the judicially enforceable requirement that all federal agency records be made available promptly upon request, subject only to nine exemptions, which are to be narrowly construed. n118

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n115. The issue of openness in government has historically been framed in terms of the right of the government to keep secrets, rather than the right of the public to have access to governmental records. See Seth F. Kreimer, Sunlight Secrets and Scarlet Letters: The Tension Between Privacy and Disclosure in Constitutional Law, 140 U. Pa. L. Rev. 1 (1991). The movement towards greater openness in the post-World War II period has been part of a broader movement in the twentieth century to hold government accountable for its actions. See id. As a result, since the progressive era of the early twentieth century, we have seen the institution of public records, open meetings, and "sunshine laws." See id.

n116. 5 U.S.C. 552 (1994).

n117. The Act has come under criticism from both advocates of openness and proponents of secrecy. See, e.g., Carome & Susman, supra note 98, at 223 (criticizing the Act because the cost of implementation outweighs the benefits it is supposed to provide); Non-Denial: How Attitudes and Inertia Combine to Subvert the Freedom of Information Act, Kiplinger Program Rep. 1-32 (Summer 1994) (discussing the success of FOIA in providing Americans with a means of acquiring information about their government).

n118. 5 U.S.C. 552.

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Critics of FOIA seldom doubt its good intentions, but they do doubt its effectiveness, complaining that the cost of implementing it [*19] far outweighs its supposed benefits. n119 The argument against FOIA was perhaps best summed up by Justice Antonin Scalia, who described the statute as "the Taj Mahal of the Doctrine of Unanticipated Consequences, the Sistine Chapel of Cost-Benefit Analysis ignored." n120 Critics like Justice Scalia charge that FOIA harms the government's and the public's legitimate need for secrecy. n121

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n119. See Carome & Susman, supra note 98, at 223; see also supra note 117.

n120. Antonin Scalia, The Freedom of Information Act Has No Clothes, 14 AEI J. on Gov't & Soc'y 1026 (1982).

n121. See id.

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Many of the most important documents relating to President Kennedy's murder have been unobtainable through FOIA. n122 Nevertheless, FOIA and the Assassination Records Review Board do share a common purpose: to break through government's historical habit of classifying information that otherwise could - and should - be open. n123

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n122. See Sanders & Zaid, supra note 62, at 408 & n.2 (stating that without the implementation of the President John F. Kennedy Assassination Records Collection Act of 1992, the records concerning the assassination would remain classified until the twenty-first century).

n123. See 44 U.S.C. 2107(b)(2) (1994) (stating the purpose of the President John F. Kennedy Assassination Records Collection Act of 1992); Carome & Susman, supra note 98, at 223 (discussing FOIA and the presumption that government information is public information).

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VI. The Business of Secrecy

Today, keeping information secret has become a massive industry in Washington. n124 According to official estimates, the government took 6.3 million classification actions in 1994, creating an estimated 19 million pages of information that only selected government officials can see. n125 More than 32,000 government workers are employed full-time to determine what should be secret, what level of secrecy the material should have, and whether the documents should be classified. n126 The government holds hundreds of millions of pages of secret documents; indeed, the precise number has gone beyond the government's ability to count. n127

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n124. See Ann Devroy, Clinton Eases Government Secrecy Rules: Most Declassification to Become Automatic, Wash. Post, Apr. 18, 1995, at A1, available in LEXIS, News Library, WPost File.

n125. See id.

n126. See id.

n127. See id.

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The problem of what to do with classified documents is strangling some government agencies. For example, consider the Department of Energy. n128 American makers of nuclear weapons have been classify- [*20] ing virtually everything for so long that the Energy Department now has more secrets than it can handle. n129 The Department has 100 million pages of documents that it

wants to review for possible release, but it does not have the resources to do so. n130 For more than fifty years, the Department followed a scheme of classification that might best be called "classified at birth." n131 Any document generated was presumed secret until proved otherwise. n132 The Department and its civilian contractors have literally lost track of what needs to be kept quiet. n133 Even more fundamental, what is genuinely in need of protection - the design of weapons and such - is lost in an ocean of documents no longer worthy of classified status (if they ever were). n134

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n128. See Matthew L. Wald, Millions of Secrets Burden Energy Agency, N.Y. Times, Feb. 7, 1996, at A15, available in LEXIS, News Library, Nyt File.

n129. See id.

n130. See id.

n131. Id.

n132. See id.

n133. See id.

n134. See id.

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In April 1995, the Clinton administration attempted to break this classification logjam. n135 The President issued an executive order aimed at opening government's oldest secrets to public view, thereby reducing the number of documents made secret and shortening the number of years they remain classified. n136 The primary element of the order is the automatic declassification without review of most documents that are twenty-five years old or older. n137 Previously, documents had remained classified indefinitely. n138 Now, unless the documents fit into a group of narrow exceptions, they will automatically be open to the public. n139

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n135. See Exec. Order No. 12,958, 3 C.F.R. 333 (1995), reprinted as amended in 50 U.S.C. 435 (1996).

n136. See id.

n137. See id.

n138. See Devroy, supra note 124.

n139. See id.

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How well the new system will work remains to be seen. Presidents come and presidents go, but the security bureaucracy remains. Not only do the

intelligence agencies grumble about having to make public that which is most precious to them, but they argue that such declassification is costly and time consuming, especially in an era of diminished resources. n140

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n140. See Tim Weiner, C.I.A. Is Slow to Tell Early Cold War Secrets, N.Y. Times, Apr. 8, 1996, at A6, available in LEXIS, News Library, Nyt File.

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VII. The Board and the Intelligence Services

The JFK Act is an attempt not only to deal with the issue of public confidence in government, n141 but also to forge a model of how we might keep from sinking in our own secrets. Yet, the intelligence community resists the opening of classified materials, even those that are now a third-of-a-century old. This defiance is particularly ironic in the case of the Kennedy assassination, in that the intelligence agencies most troubled by the disclosures are the same ones that most often figure in conspiracy theories. n142 Disclosing materials that the CIA and FBI want postponed might actually affirm that neither a foreign nor domestic conspiracy existed and demonstrate the vital role they played in supporting American interests in the Cold War.

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n141. See Assassination Materials Disclosure Act I, supra note 96, at 1 (opening statement of Chairman John Glenn) (observing that "disclosure of information is the only reliable way to maintain the public trust and to dispel distrust").

n142. See, e.g., Exhibit Nine infra p. 54. As early as 1976, the CIA itself acknowledged that "conspiracy theories have frequently thrown suspicion on our organization." Id.

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Congress never contemplated total disclosure, otherwise it would not have created the JFK Board. n143 Disclosure is an important public interest, but so too is protecting sensitive information. n144 There are many occasions for secrecy. For example, most deliberative bodies make a virtue of secrecy, because it permits compromise by allowing individuals to make concessions without losing face. n145 The Supreme Court has observed: "Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process." n146 The Court knows whereof it speaks, as its decisionmaking process in conference remains entirely confidential. n147

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n143. Both the plain reading of the statute and an examination of the legislative history make clear that Congress expected the Board to protect

certain secrets from disclosure. See 44 U.S.C. 2107(6) (1994) (identifying the grounds on which the Review Board may postpone release of assassination materials); Sanders & Zaid, supra note 62, at 419 (explaining the Board's obligations when it decides to postpone release of a document).

n144. See DuVal, supra note 14, at 668-71 (identifying 10 justifications for nondisclosure).

n145. See id. at 621-22 (observing that maintaining secrecy of advice, recommendations, and opinions allows officials to "propose, comment, and criticize without concern that their comments may seem foolish or contrary to popular sentiment" and to compromise "without loss of face").

n146. United States v. Nixon, 418 U.S. 683, 705 (1974) (footnote omitted).

n147. Secrecy in the High Court is a practice, a matter of the Court's culture and traditions, not of law. See Bob Woodward & Scott Armstrong, The Brethren xi (1979) ("The Court has developed certain traditions and rules, largely unwritten, that are designed to preserve the secrecy of its deliberations."). The Justice who tells what took place in conference is indiscreet and is likely to forfeit the respect of other Justices, but he breaks no law and neither do his law clerks. See id. Indeed, one of the arguments raised in the wake of opening the papers of Justice Thurgood Marshall was that his written commentary on his colleagues may have made it more difficult for them to deal with one another now knowing that the public understood the reasons that they held certain positions. See id. at xii (observing that, because Justices are not elected but are appointed for life, they are not disposed to allow their decisionmaking to become public). The matter is posed differently, however, in Great Britain. The Official Secrets Acts make it unlawful for a government employee to make an unauthorized disclosure of official information or for anyone who has received the information in violation of the Act to communicate it to anyone else. Official Secrets Act, 1911, 1 & 2 Geo. 5 ch. 28, 2.

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The virtues of openness in government, therefore, can be and often are overstated, especially by a self-interested press and media. Openness does mean that bad advice can be challenged, but the consequence may be that good decisions are never reached. Open records and "sunshine laws" n148 may only drive people to less easily documented forms of communication, such as the telephone. n149 Although the costs and benefits of secrecy and openness in government are not easily calculated, we do know that loose lips still sink ships, even in our own thermonuclear age.

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n148. See Kreimer, supra note 115.

n149. See Patricia M. Wald, The Freedom of Information Act: A Short Case Study in the Perils and Paybacks of Legislating Democratic Values, 33 Emory L.J. 649, 664 (1984) (observing that "to some degree creative government officials and bureaucrats will always be able to devise ways to abort FOIA's disclosure requirements").

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In the case of the Kennedy assassination, how far are we willing to countenance secrecy when a fully illuminated rendition of the events surrounding the President's murder could go a long way to restore trust in government? At what point do the costs of concealing materials become sufficiently high to our government's credibility that they are no longer worth paying? At what point do the costs of disclosure become so great that we compromise our future security? Perhaps nowhere are these issues more acutely felt by the JFK Board than in those matters involving intelligence operations.

The assassination sparked a major intelligence effort. n150 In the days following the murder of President Kennedy,

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n150. See Assassination Materials Disclosure Act II, supra note 96, at 93 (statement of Floyd I. Clarke, Deputy Director, FBI) (noting that "immediately following the assassination, the FBI began a massive and intense investigative effort"); Epstein, Trilogy, supra note 6, at 29 (describing Congress's formation of the Warren Commission less than two weeks after the assassination and the Commission's interaction with the FBI's intelligence efforts).

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The entire intelligence community worked to learn everything it could about Oswald and his murky, superficially contradictory activities. New intelligence reports from Mexico City suggested a link between Oswald and the Cuban government. The supersecret National Security Agency and allied eavesdropping agencies went into overdrive to decipher in- [*23] tercepted conversations, cable traffic, radio, and telephone communications at the highest levels of the Soviet and Cuban governments n151

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n151. Holland, supra note 18, at 54.

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The FBI literally asked all of its informants whether they could shed light on the murder. In addition, there were efforts to tap the FBI's connection with organized crime to make certain that its members, angry at the President and his brother, had not ordered the murder and that Ruby's killing of Oswald was not a classic mob hit. n152 The resulting cables and other documents laid bare most of the Cold War intelligence capacity of the United States. n153

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n152. See Posner, supra note 6, at 463-64.

n153. See Holland, supra note 18, at 54, 56.

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Students of the assassination would benefit from opening the mass of information produced by the intelligence community's intense effort to get to the bottom of the President's murder. Yet, protecting America's foreign and domestic intelligence-gathering capabilities is essential to our national defense. n154 Thus, the intelligence agencies regularly assert that the identities of agents and informants must remain perpetually confidential; n155 that nothing should be revealed about the methods and sources used to gather intelligence; n156 that direct reports from United States intelligence agents should not be disclosed; n157 and that intelligence information provided by other nations to the United States, and, indeed, the very existence of such relationships, should not be disclosed.

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n154. See Assassination Materials Disclosure Act III, supra note 96, at 381 (prepared statement of FBI Director William Sessions) (stating that among 250,000 pages requested by the House Assassinations Committee are a large number of FBI documents that "implicate national security interests").

n155. See Assassination Materials Disclosure Act I, supra note 96, at 7 (statement of CIA Director Robert M. Gates) (asserting that "we have an obligation to protect the confidentiality of our sources, regardless of the amount of time that has passed").

n156. See Assassination Materials Disclosure Act III, supra note 96, at 363, 373-74 (statement of CIA Director Robert M. Gates) (stating assumption "that there still will be information that cannot be released to the public for a variety of reasons, including ... the exposure of intelligence sources and methods"); Assassination Materials Disclosure Act II, supra note 96, at 109 (statement of Admiral William O. Studeman, Deputy Director, CIA) (echoing Gates's statement).

n157. See supra note 154.

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VIII. Informants

Informants play a critical role in the world of intelligence operations, both domestic and foreign. For example, the FBI relied heavily on informants to infiltrate the Ku Klux Klan in the 1960s and [*24] 1970s. n158 Today, the FBI recruits informants to help thwart narcotics trafficking and international terrorism. n159 The internal security and general welfare of the United States depends heavily on the role of informants. n160

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n158. See Clifford S. Zimmerman, Toward a New Vision of Informants: A History of Abuses and Suggestions for Reform, 22 Hastings Const. L.Q. 81, 91-92 (1994) (describing the FBI's mishandling of KKK informants).

n159. See R. Jeffrey Smith, Critics "Wrong,' CIA Chief Says, Wash. Post, Sept. 6, 1996, at A21, available in 1996 WL 12392255 (noting CIA Director John M. Deutch's assertion that critics who allege that the CIA has done a poor job recruiting informants knowledgeable about terrorist activities are wrong).

n160. See Ross Parker, Confidential Informants and the Truth Finding Function, 4 Cooley L. Rev. 565, 596 (1987) (citing an informal examination of federal investigations in the Eastern District of Michigan finding that about 50% of drug cases and 40% of public corruption cases involved the use of informants); Timothy A. Raezer, Needed Weapons in the Army's War on Drugs: Electronic Surveillance and Informants, 116 Mil. L. Rev. 1, 39-64 (1987) (extolling the benefits of informants to drug law enforcement); Zimmerman, supra note 158, at 178 (observing that law enforcement "has long reaped and extolled the benefits of informants").

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What duty does the government owe to persons who agree to serve as informants? There are many reasons why persons serve as informants. Money, revenge, and the sheer thrill explain some of this behavior. Yet, above all else, informants expect that they will be clothed in confidentiality in return for their information. An informant who is identified immediately loses value. All informants in the service of the various domestic and international intelligence operations are recruited with an understanding that they will be granted confidentiality - that they will never be "given-up" in the lingo of the intelligence community. n161 The very nature of what they are asked to do - commit treason on their home government, report on the activities of groups like the American Communist Party, or shed light on the activities of organized crime and terrorist groups - exposes them to tremendous danger; if they are revealed, they and their families may suffer serious personal injury, or even death.

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n161. See Assassination Materials Disclosure Act III, supra note 96, at 53 (statement of CIA Director Robert M. Gates) (observing that the CIA files "contain the names of individuals who provided us information on a promise of confidentiality").

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The Kennedy assassination documents contain thousands of names of informants drawn from every walk of life. The FBI has taken the position that these names must be protected indefinitely and that any disclosure will impair the Bureau's ability to recruit new informants. Yet, all informants are not created equal. Some have greater value than others, both for the story of the Kennedy assassination and for providing information about organized crime and other activities. Moreover, the issue is not simply one of the quality of the information [*25] that is provided. As Exhibit One demonstrates, the vast majority of documents involving informants has been opened in part; infrequently only the names of the informants and other key identifying language has been redacted. n162 These redactions breed a sense of expectation among researchers, because in the climate of conspiracy that surrounds the Kennedy assassination, any material that is covered up is presumed to be an important missing link in the chain of explanation about the murder.

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n162. See Exhibit One infra p. 39.

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Exhibit One is perhaps representative of the issues raised about the Review Board's disclosure of informants. The Exhibit contains a message sent by the FBI Special Agent in Charge (SAC) in Houston to the SAC in Dallas and to FBI Director J. Edgar Hoover on November 26, 1963, four days after the murder of President Kennedy. n163 This document was originally reviewed by the FBI, and designated for release under the terms of the JFK Act with certain materials redacted. Those redactions appear in Exhibit One and indicate what material the FBI wanted to keep from the public. n164

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n163. See id.

n164. See id.

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As Exhibit Two reveals, the Board decided that much of the redacted material could be released, most notably the name of Mary Ann McCall, a hostess at a Dallas night spot. n165 By the time the informant had interviewed McCall, Jack Ruby had already killed Oswald. The Board decided that the historical record was well served by opening McCall's name, especially given her purported relationship with the Dallas police and organized crime. The Board, however, also accepted the FBI's argument that the name of the person who provided the information about McCall should be protected. Consequently, a document that had many redactions when it was sent from the FBI to the Board went into the public record with only one name redacted. The Board was satisfied that revealing the informant's name would harm the informant, thus outweighing the value of immediate disclosure. The Board used substitute language to make clear to students of the assassination that the redacted portion was the name of a "confidential informant" and ordered that the name be released in the year 2010. n166

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n165. See Exhibit Two infra p. 41.

n166. See id.

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Should it matter to the Board that many of these informants, when interviewed after the assassination, did not provide positive information about Oswald or Ruby? There are countless examples of [*26] individuals who, when contacted by intelligence services, indicated that they knew nothing about the assassination. The Board has taken the position that intelligence services must demonstrate that harm would come to the individual if her name were released. Agencies must be able to identify the individual, indicate that she is still alive, and establish that some harm will befall her. n167 The threshold issue,

therefore, is whether an agency that seeks to protect an individual, regardless of the quality of the information provided, can substantiate the claim that harm will come to that person as a result of revealing her name. When an agency has failed to do so, the Board has released the name. n168 The record of events surrounding the assassination will never be complete until we know what blind alleys are not worth pursuing. As any good investigator knows, eliminating blind alleys is critical, because the elimination provides additional certainty about who knew nothing, a fact that can be helpful in discerning who knew something. In this context, knowing that an informant knew nothing, at least by her statement, is valuable itself, given the complexity of the conspiracy theories surrounding the assassination.

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n167. See 44 U.S.C. 2107(6)(2) (1994) (permitting postponement of public disclosures when there is clear and convincing evidence that the "name or identity of a living person who provided confidential information to the United States ... would pose a substantial risk of harm to that person"); see also supra notes 102-106 and accompanying text.

n168. The McCall document cited above, and found at Exhibits One and Two, infra pp. 39-42, is an example of the Board's release of an individual's name after determining that no harm was likely to come to the individual and that public interest in the disclosure would be high. See supra notes 165-166 and accompanying text.

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Spying is a feature of modern foreign affairs, and there can be no doubt that, as with informants, we owe some protection to those individuals employed in the clandestine service of the CIA. n169 Understanding how our clandestine services operate and what information they did or did not provide is critical to the assassination story. For example, the CIA sought to protect a considerable amount of information involving the use of double agents to infiltrate the Soviet Embassy in Mexico City. As Exhibit Three makes clear, the Agency originally wanted to protect broad sections of a message sent on November 29, 1963, one week after the murder of the President. n170 The CIA believed that releasing the information would compromise the [*27] double agents and reveal the scope of the Agency's efforts against the former Soviet government. Yet, in terms of the story of the assassination, knowing the quality of the effort directed against the Soviets in Mexico City was considered crucial. As Exhibit Four reveals, only weeks before Lee Harvey Oswald was arrested for killing President Kennedy, Oswald had visited the Soviet Embassy in Mexico seeking a visa that would allow him to return to the Soviet Union by way of Cuba. n171 The Board opened most of the information that the Agency previously wanted to postpone, and where the Board determined that disclosure would be harmful, it relied on substitute language, which is handwritten in Exhibit Three. n172

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n169. The JFK Act acknowledges the obligation of protecting the identity of intelligence officers. See 44 U.S.C. 2107(6)(1)(A) (allowing postponement of the release of JFK documents if they involve public disclosure of "an intelligence agent whose identity currently requires protection"); see also supra note 102

and accompanying text.

n170. See Exhibit Three infra p. 43. The CIA originally sought to postpone the information that is in the brackets. See id. In some cases, information was postponed, but substitute language, as provided by the statute, was inserted in its place. See id.

n171. See Exhibit Four infra p. 45.

n172. See Exhibit Three infra p. 43.

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The CIA also worries about the status of its former employees and expects that these employees will not reveal the nature of their activities without first seeking the Agency's permission. n173 If an individual retires from the CIA undercover, does it follow that historical researchers must forever be denied access to that person's true name, especially when she is alive and able to answer questions? Does an agent in the clandestine service of the country have a right to be free from the prying questions of researchers and reporters? Does it make any difference, as in the case of informants, that an agent provided only negative information? Should we worry about whether an agent is alive or dead? Or does it follow that significant harm might come to the agent's family and friends through the revelation of her name? Are we willing, in the interest of providing the fullest and richest historical record of the assassination, to subject spouses, children, and parents to potential harassment or worse?

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n173. See Melvin L. Wulf, Introduction to Marchetti & Marks, supra note 72. In 1972, the CIA successfully sued former agent, Victor Marchetti, to require that his manuscript be submitted to the CIA for review prior to publication. See id. at xix.

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Weighing the potential harm to such persons against the public's right to know is challenging. We should recall that in 1975, Richard Welch, the CIA station chief in Athens, Greece, was murdered by unidentified gunmen as he returned to his home from a party at the ambassador's residence. n174 Former CIA Director William Colby attributed the death to a magazine account that had named Welch only a [*28] month before. n175 For those agents who are still alive but in retirement, should we take their word that they are at grave risk? Does a lifetime of intrigue have as its cost a retirement filled with uncertainty?

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n174. See Rhodri Jeffreys-Jones, The CIA and American Democracy 211-12 (1989) (observing that "pro-CIA partisans blamed Welch's death on Agency critics who had irresponsibly released too much information"); Jeremiah O'Leary, Cover Blown, CIA Agent in Athens Killed, Wash. Star, Dec. 24, 1975, at A1 (noting that a United States publication's naming of Welch as the CIA station chief who was slain in Athens will fuel controversy about tragic consequences of public disclosure of CIA personnel).

n175. See O'Leary, supra note 174, at A1.

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The value of confidential FBI and CIA sources to the Warren Commission's work is underscored by the documents released thus far by the Board. For example, Exhibit Four is a letter dated June 17, 1964 from FBI Director J. Edgar Hoover to J. Lee Rankin, then General Counsel to the Warren Commission. n176 The letter details what the FBI knew about Fidel Castro's assessment of the assassination. n177 Originally classified as "Top Secret," this document indicates that the United States had a source sufficiently close to Castro to gauge the Cuban leader's evaluation of Oswald and the circumstances surrounding his visit to the Cuban embassy in Mexico City. n178 The FBI wished to redact much of this material. The FBI was concerned that Castro's tests were at variance with the FBI's test results. The Board decided that the information contained in the letter was critical to the assassination story; n179 therefore, the entire document was made available to the American public, illuminating the thinking of Castro and the credibility of the American intelligence community to assess the Cuban leader.

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n176. See Exhibit Four infra p. 45.

n177. See id.

n178. See id.

n179. Parts of the document had been declassified in 1976, but the FBI wanted to continue to postpone release of the portions in brackets. See id.

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In matters of informants and agents, the JFK statute directs the agencies to provide the Board with "clear and convincing evidence" that disclosure will result in harm, either to an individual or to current operations. n180 If the FBI, for example, is unable to find a former informant, and thus does not know whether she is alive or dead, what is the Board's duty? The Board faces the dilemma of either erring on the side of protecting the individual's identity, even though there is no evidence that the person is alive and living under a current threat, or enriching the historical record by revealing the individual's identity while running the risk of causing unnecessary harm.

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n180. 44 U.S.C. 2107(6) (1994).

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There is also the related question of how to treat the names of persons described in the reports of informants as being engaged in some illicit conduct when there is no proof, other than the informant's word, to support the accusation. Is that individual owed a right [*29] to know that he or she was so identified, or is it the Board's duty to redact the person's name? Would disclosing false information be more damaging than retaining it in government

records where only government officials have access to such information?

These questions indicate the range of issues associated with deciding whether to postpone releasing the names of informants and agents. Where does the requirement for a full historical record of the Kennedy assassination yield to the prudential uses of secrecy to preserve the nation's ability to gather intelligence?

IX. Sources and Methods

The JFK Act requires the Board to balance the need to protect sources and methods of intelligence collection with the public need for disclosure of information relating to the assassination. n181 The inappropriate release of documents, either in part or in full, dealing with our intelligence agencies' sources and methods could afford hostile nations, organized crime, terrorists, and drug dealers an understanding of our intelligence capabilities. If another nation or a terrorist group knows how we are able to exercise surveillance over them, they are likely to adopt appropriate countermeasures. They also might seek to provide selectively misleading information, knowing that we are listening and how we are listening. Many of the documents already available in the JFK Collection at the National Archives indicate that the United States bugged, tapped, photographed, and otherwise conducted surveillance of persons and places. The question arises whether we should also reveal the precise kind of equipment that was used, how it was employed, and against whom it was targeted. Knowledge about equipment and technique would be important in evaluating the capability of the intelligence community, not only to ply its craft, but to organize a conspiracy on its own. Again, the question arises whether disclosing a source, method, or technique should turn on whether positive or negative information becomes available.

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n181. See 44 U.S.C. 2107(7) (authorizing postponement of the release of records if the threat of disclosure "is of such gravity that it outweighs the public interest"); see also supra note 102 and accompanying text.

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Exhibit Five provides a good indication of the kinds of issues involved in dealing with sources and methods. n182 This document is a cable sent from the Director of the CIA on November 23, 1963, only hours after the murder of the President, seeking information about a surveillance operation conducted in Mexico City. n183 The message [*30] sought information about what the CIA operatives in Mexico City knew about the existence of tapes and transcripts involving surveillance of the Soviet Embassy there. n184 The CIA originally requested the postponement of much of the information in this document; however, the Board decided that its centrality to understanding the assassination story required its release, with the only redaction being the name of the authenticating office, whose pseudonym was used in its place. n185 Because it helps to clarify the issue of whether the CIA taped Oswald's conversations in the Embassy, this document is one of the most significant released by the Board to date. This document also suggests the CIA's awareness of and interest in Oswald before he purportedly shot the President.

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n182. See Exhibit Five infra p. 47.

n183. Id.

n184. Id.

n185. See id. The material enclosed in brackets in Exhibit Five was originally withheld by the CIA. See id.

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There is also the question of whether the Board should reveal the identities of those who handled information relating to the investigation of the assassination. America's intelligence machine is a huge bureaucracy that processes information in staggering quantities. n186 How and by whom information relating to the assassination was organized, processed, and distributed is central to evaluating the CIA's role in the assassination. For example, Exhibit Six pertains to the continuing debate about whether the Agency photographed Oswald entering the Soviet Embassy and whether a record of what he had to say there was ever sent to CIA headquarters. n187 Arguably, unraveling the chain of custody of that material is critical. Yet, to do so would require identifying the persons who handled it. In this instance, the Board decided that, on grounds of personal privacy and potential harm, it would not disclose the name of one CIA official involved with the Mexico City operation, although the names of other officials were released in cooperation with the CIA.

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n186. See Assassination Materials Disclosure Act III, supra note 96, at 397 (photograph depicting voluminous JFK assassination files); Wald, supra note 128 (describing the Department of Energy's accumulation of information).

n187. See Exhibit Six infra p. 48.

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X. Foreign Liaison

The American government conducts its intelligence operations in collaboration with the services of other nations. n188 For example, the most secret agreement ever entered into by the English-speaking world is the pact by which the United States, Great Britain, Canada, [*31] Australia, and New Zealand carved the world into spheres of cryptologic influence, assigning each nation targets and agreeing to standardize terminology, code words, and other operations procedures. n189 Revelations of these and other relationships could prove extremely embarrassing to the cooperating governments, especially when those governments profess to be neutral or have publicly stated that they have no connection with the CIA. However, a full understanding of the intelligence base upon which the Warren Commission and the intelligence community as a whole assessed the Kennedy assassination depends on a thorough accounting of such connections. Moreover, perhaps nowhere else is negative information more important than when the intelligence service of another country has access to

unique sources. There is, as well, the related question of how much information was known at the top of the cooperating governments and the extent to which such knowledge would enhance our understanding of the assassination as being the work of foreign conspirators. If we compromise any of those relationships and consequently cause political damage to the cooperating government, we may find a valuable future source of intelligence closed. n190

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n188. See Stafford T. Thomas, The U.S. Intelligence Community 89-94 (1983).

n189. See James Bamford, The Puzzle Palace: A Report on America's Most Secret Agency 309, 315-17 (1982).

n190. Congress acknowledged this concern in the JFK Act by allowing postponement of the release of documents, which clear and convincing evidence establishes will "compromise the existence of an understanding of confidentiality currently requiring protection between a Government agent and a ... foreign government." 44 U.S.C. 2107(6)(4) (1994).

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Exhibit Seven poses some of these liaison issues. n191 The FBI provided the Board with this heavily redacted document, arguing that release of the body of material in the message from the FBI field office in Paris to the Director of the FBI in Washington on October 12, 1960 (three years before the assassination), would damage the ability of the United States to work with the intelligence and police operations of a foreign nation. The cable, however, struck the Board as being particularly important, in that it showed that three years before the murder of the President the FBI was engaged in surveillance of Oswald's activities. n192 The Board was also concerned that concealing so large an amount of material would only heighten speculation about the document's significance.

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n191. See Exhibit Seven infra p. 52.

n192. See id.

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[*32]

As Exhibit Eight demonstrates, the contents of the cable were far more sinister when redacted than when they were disclosed in full. n193 To gain this release, the Board sought the cooperation of the Swiss ambassador to the United States, who consented to the release, only with the proviso that the names of specific Swiss officials not be divulged. As a result of the cable's release, we know that the FBI had knowledge of and interest in Oswald's activities well before the assassination, to the extent of relying on officials of the Swiss Federal Police to learn about his possible attendance at Albert Schweitzer College. n194

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n193. See Exhibit Eight infra p. 53 (observing that Oswald announced his plans to attend Swiss college, but that he never arrived to attend classes).

n194. See id. (documenting FBI's request to Swiss police for information about Oswald).

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XI. Of Times and Theories

How to address the host of issues raised by these intelligence materials depends on answers to two overriding questions. The first is whether the passage of time renders open that which currently requires postponement. The second is whether, by adopting a particular theory about what happened in Dallas, the Board so fundamentally shapes its assumptions about the significance of documents that it may actually fail to open the most critical of them.

More than a third of a century has passed since the murder of President Kennedy. When asked whether the sources, methods, and techniques used then are no longer worthy of protection today, the intelligence and law enforcement agencies appropriately answer no. n195 They argue that disclosure at any time will reduce their capabilities and, hence, our national security. n196 In the world of intelligence operations, all secrets must live forever, lest we be unable to find new secrets in the future.

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n195. See supra notes 154-157 and accompanying text.

n196. See supra notes 154-157 and accompanying text.

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The passage of time, however, has made a difference, and in some instances dramatically so. There is today no Soviet Union to which Lee Harvey Oswald could return. If he returned to Minsk, he would find it a capital of an independent nation, rather than a satellite of the Communist Empire. The Warsaw Pact has dissolved; the capitals of Eastern Europe now sport trendy shops and capitalist enterprises; Cuba survives by importing tourists from everywhere but the United States; and China has emerged as a major American market. Not only is the Cold War dead, but so too are many of the principal figures in the assassination - President Johnson, Robert F. Kennedy, John Connally, and Jacqueline Kennedy. The U-2 is regularly fea- [*33] tured on television documentaries; photographs from the once super-secret Keyhole surveillance satellites of the 1960s and early 1970s leap from the pages of the current issues of Scientific American. n197 There is no doubt that the CIA, FBI, and military intelligence services snooped on us and other nations, friend and foe. n198 The CIA in particular argues that current intelligence activities must remain plausibly deniable and that the Board's role should be to postpone the disclosure of actions taken a third-of-a-century ago that conceivably could compromise current operations. Yet, we might reasonably ask ourselves, as the Board has, whether, three decades later, we would compromise our security interests around the world by indicating that a CIA station once existed in Moscow.

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n197. See Dino A. Brugioni, The Art and Science of Photo Reconnaissance, Sci. Am., Mar. 1996, at 78. Few secrets were accorded more respect than the techniques associated with photo reconnaissance by spy planes and satellites. See id. (discussing 800,000 reconnaissance photographs taken by the CIA from 1960-72 and kept secret). There is now, however, growing information about the capabilities of the United States during the Cold War. See id.; see also Stuart F. Brown, America's First Eyes in Space, Popular Sci., Feb. 1, 1996, at 42, available in 1996 WL 9275085 (describing the government's declassification of 800,000 photographs); Philip Chien, High Spies: U.S. Reconnaissance Satellites, Popular Mechanics, Feb. 1996, at 47, available in LEXIS, News Library, Mag File (explaining that one of the original reconnaissance satellites of the 1960s will be displayed at the Smithsonian's Air and Space Museum).

n198. See generally Michal R. Belknap, Cold War Political Justice (1977) (describing the Department of Justice's nationwide campaign to bring down the Communist party of the United States); Nelson Blackstock, Cointelpro: The FBI's Secret War on Political Freedom (1976) (describing the FBI's counterintelligence operations and violations of constitutional rights); Ward Churchill & Jim Vander Wall, The Cointelpro Papers x (1990) (describing FBI documents that "expose the secret, systematic, and sometimes savage use of force and fraud, by all levels of government to sabotage progressive political activity"); Frank J. Donner, The Age of Surveillance (1980) (describing U.S. domestic intelligence operations); Brian Freemantle, CIA (1983) (attributing CIA excesses to lack of direction or misdirection from the Executive Branch and presidency); Jeffreys-Jones, supra note 174 (describing how allegations of the CIA's failed operations in Bogota, Columbia led to an expansion of intelligence operations); Mark Reibling, Wedge: The Secret War Between the FBI and CIA (1994) (discussing the CIA's efforts to assassinate Fidel Castro); David Wise, The American Police State: The Government Against the People (1976) (describing U.S. domestic intelligence operations).

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If the passage of time makes no difference, then the American people would never have a right to all of the information used or denied by the Warren Commission. The passage of time neuters secrecy, and eventually, like Douglas MacArthur's old soldiers, secrets just fade away. If there are any secrets that a democratic government has a right to keep permanently from its people, surely the murder of the President would not be one such secret.

Then there is the problem of what theory the Board should adopt to explain events in Dallas. Gerald Posner, for example, has pub- [*34] lished a widely read book on the assassination entitled Case Closed. n199 It concludes that Lee Harvey Oswald murdered President Kennedy, that he did so acting alone, and that there is no evidence of a larger conspiracy, foreign or domestic. n200 That notion of the assassination is countered by a host of critics that insist on just the opposite. n201

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n199. Posner, supra note 6.

n200. See id. at 472.

n201. See, e.g., Harrison E. Livingstone, Killing Kennedy 282-334 (1995) (arguing that Posner's book tricked the public with false scholarship); G. Robert Blakey, Murdered by the Mob?: 30 Years After the Kennedy Assassination, This Case Isn't Closed, Wash. Post, Nov. 7, 1993, at C1, available in LEXIS, News Library, Wpost File (arguing that credible scientific and other evidence points to a conspiracy); Jeffrey A. Frank, Who Shot JFK? The 30-Year Mystery, Wash. Post, Oct. 21, 1993, Book World, at X4, available in LEXIS, News Library, Wpost File (arguing that Posner "rarely strays from paths staked out by the Warren Commission" and that the "book ultimately becomes an all-too-transparent brief for the prosecution"); Jonathan Kwitny, Bad News: Your Mother Killed JFK, L.A. Times, Nov. 7, 1993, at 1, available in LEXIS, News Library, Lat File (contending that Posner "presents only the evidence that supports the case he is trying to build").

Posner related that other reactions to his book included an accusation that he was a CIA agent, a computer network asking its members to discredit his book, and demonstrators in front of his hotel. See Geoffrey C. Ward, The Most Durable Assassination Theory: Oswald Did It Alone, N.Y. Times, Nov. 21, 1993, 7, at 15, available in LEXIS, News Library, Nyt File (describing the reactions Posner received from his book).

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The general assumptions the Board holds about what happened inform how it assesses the value of a particular document to the public. If the Board assumes that Oswald murdered the President, and consequently looks only for information that speaks to his role, it is likely, on national security grounds, to postpone certain kinds of information. If the Board assumes that the murder was a conspiracy, then much of what seems irrelevant to the Oswald explanation may actually have great currency. n202 The intelligence agencies rely on the [*35] [*36] theory that Oswald did it and that he did it alone. n203 To support such a position, they turn, ironically, to the findings of the Warren Commission, n204 a body that in some ways they attempted to deceive. Perhaps there is no better evidence of the CIA's attitude than its effort to sway public opinion abroad in the wake of the release of the Warren Commission Report. n205 As Exhibit Nine makes clear, the CIA used its substantial resources to just that end. n206

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n202. The Board adopted a broad definition of an "assassination record" with just such issues in mind. See 36 C.F.R. pt. 1400 (1995). The pertinent sections dealing with the scope for interpreting the JFK statute read as follows:

1400.1 Scope of assassination record.

(a) An assassination record includes, but is not limited to, all records, public and private, regardless of how labeled or identified, that document, describe, report on, analyze or interpret activities, persons, or events reasonably related to the assassination of President John F. Kennedy and investigations of or inquiries into the assassination.

(b) An assassination record further includes, without limitation:

(1) All records as defined in Section 3(2) of the JFK Act;

(2) All records collected by or segregated by all Federal, state, and local government agencies in conjunction with any investigation or analysis of or inquiry into the assassination of President Kennedy (for example, any intra-agency investigation or analysis of or inquiry into the assassination; any interagency communication regarding the assassination; any request by the House Select Committee on Assassinations to collect documents and other materials; or any inter- or intra-agency collection or segregation of documents and other materials);

(3) Other records or groups of records listed in the Notice of Assassination Record Designation, as described in 1400.8 of this chapter.

1400.2 Scope of additional records and information.

The term additional records and information includes:

(a) All documents used by government offices and agencies during their declassification review of assassination records as well as all other documents, indices, and other material (including but not limited to those that disclose cryptonyms, code names, or other identifiers that appear in assassination records) that the Assassination Records Review Board (Review Board) has a reasonable basis to believe may constitute an assassination record or would assist in the identification, evaluation or interpretation of an assassination record. The Review Board will identify in writing those records and other materials it intends to seek under this section.

(b) All training manuals, instructional materials, and guidelines created or used by the agencies in furtherance of their review of assassination records.

(c) All records, lists, and documents describing the procedure by which the agencies identified or selected assassination records for review.

(d) Organizational charts of government agencies.

(e) Records necessary and sufficient to describe the agency's:

(1) Records policies and schedules;

(2) Filing systems and organization;

(3) Storage facilities and locations;

(4) Indexing symbols, marks, codes, instructions, guidelines, methods, and procedures;

(5) Search methods and procedures used in the performance of the agencies' duties under the JFK Act; and

(6) Reclassification to a higher level, transfer, destruction, or other information (e.g., theft) regarding the status of assassination records.

(f) Any other record that does not fall within the scope of assassination record as described in 1400.1, but which has the potential to enhance, enrich, and broaden the historical record of the assassination.

1400.3 Sources of assassination records and additional records and information.

Assassination records and additional records and information may be located at, or under the control of, without limitation:

(a) Agencies, offices, and entities of the executing, legislative, and judicial branches of the Federal Government;

(b) Agencies, offices, and entities of the executive, legislative, and judicial branches of state and local governments;

(c) Record repositories and archives of Federal, state, and local governments, including presidential libraries;

(d) Record repositories and archives of universities, libraries, historical societies, and other similar organizations;

(e) Individuals who possess such records by virtue of service with a government agency, office, or entity;

(f) Persons, including individuals and corporations, who have obtained such records from sources identified in paragraphs (a) through (e) of this section;

(g) Persons, including individuals and corporations, who have themselves created or have obtained such records from sources other than those identified in paragraphs (a) through (e) of this section;

(h) Federal, state, and local courts where such records are being held under seal; or

(i) Foreign governments.

1400.4 Types of materials included in scope of assassination record and additional records and information.

The term record in assassination record and additional records and information includes, for purposes of interpreting and implementing the JFK Act:

(a) papers, maps, and other documentary material;

(b) photographs;

(c) motion pictures;

(d) sound and video recordings;

(e) machine readable information in any form; and

(f) artifacts.

n203. See Exhibit Nine infra p. 54 (contending that "Oswald would not have been any sensible person's choice for a co-conspirator").

n204. See id. (advising that in discussing assassination with "politicians and editors," CIA personnel point out that the Warren Commission "made as thorough an investigation as humanly possible").

n205. See id.

n206. See id. (noting that the American public's belief that Oswald did not act alone "is a matter of concern to the U.S. Government, including [the CIA]").

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There is considerable irony in the CIA's position, both then and now. Much of the speculation about the murder of President Kennedy has centered on the role of that agency. n207 The only way to sustain its innocence in this matter may well be to fully disclose the evidence, including selected sources and methods, that will reveal conclusively that neither it nor some foreign power was behind the murder.

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n207. See, e.g., Prouty, supra note 29 (reviewing the history of troubled relations between the CIA and President Kennedy); Alan J. Weberman & Michael Canfield, Coup D'etat in America, The CIA and the Assassination of John F. Kennedy (1992) (asking whether Lee Harvey Oswald was a CIA agent); JFK, supra note 9.

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Conclusion

The American public should not rely on the JFK Board to settle the question of what happened in Dallas and why. That is not the [*37] Board's mandate. n208 The Board is not charged with answering the question of who murdered President Kennedy. It is not running an investigation; it is, instead, seeking to disclose documents in an age of open secrets, an age in which we have come to embrace the idea that openness is to be preferred and that accountability is the touchstone for public confidence in government. n209

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n208. See 44 U.S.C. 2107(2)(b) (1994) (identifying the purpose of the JFK Act as establishing the President John F. Kennedy Assassination Records Collection of the National Archives and Records Administration and requiring "the expeditious public transmission to the Archivist and public disclosure of such [assassination] records").

n209. See supra note 14.

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We are reminded almost daily by the press and media spokespersons that the maintenance of secrets is bad, that openness is good, and that accountability

in all public matters is highly desirable. n210 Full disclosure is to be preferred over partial; the full truth is better than something less, and the more we know about what government has done, is doing, and plans to do, the more secure we will be in our liberties. Yet, the intelligence community charged with making the case for secrecy often does so as a matter of routine rooted in tradition. n211 Secrecy in a democracy deserves better; it cannot be an end in itself, and it certainly cannot be justified simply to obscure the intelligence services that generate much of it in the first place. Such an approach is ultimately self-defeating, both for the intelligence community and for the government it serves.

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n210. See, e.g., Weiner, supra note 140 (discussing the CIA's slow release of its files on the most important covert actions of the Cold War). The argument in support of openness and accountability in government is advanced carefully by Norman Dorsen & Stephen Gillers, None of Your Business: Government Secrecy in America (1974).

n211. See Wald, supra note 128 (observing that, at the Department of Energy, "ideas are 'classified at birth,' or presumed secret until proved otherwise"); see also supra notes 124-134 and accompanying text.

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George Bernard Shaw was correct when he argued: "There are no secrets better kept than the secrets that everybody guesses." n212 Shaw's words surely describe the approach of the intelligence agencies to the Kennedy assassination. In the absence of disclosure, the public, goaded by a news-hungry press and an activist research community, will be left to speculate in sensational ways about the assassination. Such speculation will continue to have predictably corrosive consequences.

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n212. Christopher Morley & Louella D. Everett, Familiar Quotations: A Collection of Passages, Phrases and Proverbs, Traced to Their Sources in Ancient and Modern Literature by John Bartlett 720 (12th ed. 1948) (quoting George Bernard Shaw).

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We should all be stunned that, with countless documents still hidden in government filing cabinets, researchers, newspaper reporters, [*38] columnists, and movie and TV producers have managed to convey a broadly held view that the Warren Commission failed and that the government knows more than it is telling. n213 We should stand in awe of their capacity to explain the assassination in such breathtaking terms when so much still remains under lock and key. By breaking confidences with former informants and disclosing clandestine CIA and FBI operations, a fuller record will put to the test the most sinister of all conspiracy theories: that the President was murdered by his own government. Such a matter cannot be left to chance explanation because it eats away at the foundation of public confidence in government, which neither well-intentioned secrecy nor covert operations can restore.

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n213. See supra notes 6-10 and accompanying text.

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What Americans require is a greater sense that they can trust their government to protect the secrets that are genuinely important. The government's persistent inability to distinguish between what is vital and what is not n214 lies at the heart of the debate about openness and secrecy in government, the historical verdict on the Kennedy assassination, and the legitimacy of our intelligence services in an admittedly dangerous world.

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n214. See Wald, supra note 128 (noting that the Department of Energy is spending $ 3 million on a computer program that will make an initial assessment regarding possible disclosure of 100 million pages of documents to reduce the number of secret documents to a manageable quantity for further human assessment).

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Americans have been left guessing about the Kennedy assassination since the Warren Commission issued its report. When everything is secret, everything is secret - and that is how the intelligence business operates. n215 In the case of the Kennedy murder, however, that strategy has taken a heavy toll. Our task is to accept on a principled basis the importance of secrets in a democracy and to protect what is truly valuable and in the public interest to keep secret. Only then will it be possible to assess whether charges of a conspiracy to murder President Kennedy are but another example of the virulence of the national appetite for bogus revelation.

[SEE EXHIBITS IN ORIGINAL]

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n215. See generally Marchetti & Marks, supra note 72, at 370 (concluding that secrecy has become a "way of life" for U.S. intelligence operations).

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13-00000

CIA HAS NO OBJECTION TO DECLASSIFICATION AND/OR RELEASE OF CIA INFORMATION IN THIS DOCUMENT

COVER SHEET

FAX

To: J. Barry Harrelson
Fax #: 703-613-3063
Subject: Segregated Collections
Date: April 23, 1997
Pages: 7, including this cover sheet.

Today the Board adopted the attached guidelines.

From the desk of...

T. Jeremy Gunn
General Counsel
Assassination Records Review Board
600 E Street, N.W.
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Assassination Records Review Board
Guidelines for Review of Postponements in the Segregated Collections
Adopted: April 23, 1997

Background

In order to ensure that the Review Board will be able to complete its task of reviewing all identified assassination records, the Board recently took two significant steps. First, on November 13, 1996, it adopted guidelines with respect to reviewing "Segregated Collections" with regard to information that is "not believed relevant" (NBR) to the assassination. Second, in February 1997, the Review Board requested Congress to extend its tenure for one additional year.

It is the Review Board's judgment that, even with the assumption that our operations may be extended through Fiscal Year 1998, the Review Board cannot hope to complete review of postponements in the Segregated Collections under the current method of review. In particular, a reasonable modification of current postponement standards would greatly expedite and facilitate the release of additional information and records. Otherwise, the Review Board might cease operations without having reviewed claimed postponements in tens of thousands of pages of FBI and CIA records.

Postponement Criteria for the Segregated Collections

In a further effort to enhance the Review Board's work, the Review Board now issues these revised guidelines for the review of records in the Segregated Collections.[1] (These guidelines do not affect the FBI's Core and Related Files or the CIA's 201 file on Oswald.) The four principal factors that underlie these review guidelines are: first, continuing, to the greatest reasonable extent, the Review Board's established guidelines for postponements that have emerged over the past two years; second, establishing guidelines consistent with the Review Board's decision regarding NBR records; third, establishing reasonable and workable guidelines that will enable the

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[1]The regulations adopted by the Board on November 13, 1996, define "Segregated Collections" as including *first,* FBI records that were requested by: (a) the House Select Committee on Assassinations ("HSCA") in conjunction with its investigation into the Kennedy assassination; (b) the Church Committee in conjunction with its inquiry into issues related to the Kennedy assassination; and (c) by other bodies (*e.g.,* Pike Committee, Abzug Committee, etc.) that relate to the Kennedy assassination; and *second,* CIA records including (a) the CIA's Sequestered Collection of 63 boxes as well as one box of microfilm records and the microfilm records (box 64), and (b) several boxes of CIA staff "working files."

Review Board, the ARRB staff, the CIA, and the FBI to complete the significant amount of work that remains; and finally, to provide reasonably consistent standards for the review of postponements that would apply equally to CIA and FBI records.

The following are, in summary form, guidelines for reviewing postponements in the Segregated Collections.[2]

CIA Source and FBI Informant and National Security Asset Postponements

There are, of course, similarities and differences between FBI informants and CIA sources. Like FBI informants and national security assets, CIA sources may or may not be paid for the information that they provide and they may or may not be providers of information over the long-term. When providing information to the Bureau, FBI informants generally are understood to be cooperating with law enforcement officials for a legal and legitimate purpose. It is often the case, although not always, that FBI informants understand that at some point their name might surface in conjunction with a criminal prosecution and that they may need to testify in court. Foreign CIA sources and FBI national security assets, however, are not necessarily deemed to be cooperating with law enforcement officials but may, in fact, be committing the crime of espionage against their native country by cooperating with US authorities. Furthermore, unlike FBI informants, CIA sources and FBI national security assets presume that their names will not be released publicly and they certainly presume (in the ordinary course) that their identities will not surface in criminal trials. As a practical matter, it is generally much easier today for the FBI to locate a former informant who resides in the United States than it is for the CIA and FBI to locate former sources and national security assets.

Despite these differences -- differences which would generally suggest a greater degree of protection being owed to CIA sources and FBI national security assets -- the issues in terms of postponements are fundamentally similar.

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[2]The existing "NBR" guidelines allow the Review Board to remove from detailed consideration those records or files that truly have no apparent relevance to the assassination. Nevertheless, a significant number of files in the Segregated Collections contain records that shed some light on issues that the HSCA explored as potentially relevant to the assassination of President Kennedy. The following criteria would apply to all records in the Segregated Collections, including records containing some NBR redactions.

CIA Sources

The Review Board established guidelines, during its December 1996 meeting, for handling CIA source issues and applied those guidelines at the January 1997 meeting. These guidelines directed the protection of names and identifying information of CIA sources in cases where the identity of the source is of low public interest or is peripheral to the JFK assassination. The Board's decision was based on two factors: the concern that since CIA sources generally live outside the United States, they could risk harm if their identities were revealed. Moreover, many of the sources referenced in CIA records appear infrequently and are of relatively low public interest. Therefore, in records where the identity of the source is of importance for understanding the assassination, the CIA will be required to provide additional evidence to support the protection of the source's identity.[3] In cases where the identify of the source is peripheral to the assassination story, the information will be postponed until 2017.

FBI National Security Assets

FBI national security assets should be treated in the same manner as CIA sources.

FBI Informants

Informant issues represent the largest category of postponements in the FBI's Segregated Collection, as they do in the "core" FBI assassination files. They also provide the greatest opportunity for streamlining the review process. Currently, there are ten members of the Bureau's JFK Task Force who are responsible for researching individual informants in response to evidence requests from the Review Board.[4] They retrieve and review the informants' files and attempt, through DMV, Social Security, and other database searches, to determine if the informant is alive. Under current Review Board standards for "core" files, this work is necessary to provide evidence to support redacting the informant's name, ***regardless*** of whether the informant provided information. Removing the requirement of proving whether informants are alive in the Segregated Collections would free up significant resources that could be deployed to reviewing unprocessed HSCA subject files.

The new approach to HSCA subjects is to protect informant-identifying information,

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[3]An example would be the case of John Scelso (pseud.). The Board found that his identity is relevant to the assassination story and CIA offered evidence of a continuing need to protect the identity. In this case, "Scelso" documents would continue to be scheduled for release in five years.

[4]Six work full-time on informant evidence, four devote about half their time to informant evidence.

without requiring the Bureau to make a showing that the informant is alive. This protection would extend to individuals characterized as symbol-number informants, "PSIs," "PCIs," "established sources," "panel sources," and the like -- designations that indicate an ongoing relationship with the FBI. It would not extend to individuals who requested that their identity be protected in an isolated contact with the FBI or to local and state law enforcement officers.

The "informant-identifying information" to be protected would include the customary (*i.e.*, informant-specific) portions of informant symbol numbers and file numbers, informant names, and -- at least potentially -- descriptions of, and information received from, the informant. How much, if any, of the latter type of information should be redacted would be the principal focus of staff-level discussions with the FBI. The staff's principal goal in this process, with regard to each informant, would be to release as much information that is relevant to understanding the assassination as possible. In discussions with the FBI, the staff would be prepared, if necessary, to concede redaction of informant-identifying information that is unrelated to the assassination in order to ensure that more pertinent information is released.[5]

The presumption will be that an informant's identity will be released if the informant provides "positive" information about an assassination-related issue. To overcome this presumption of release for informants with "positive" information, the FBI would need to make a particularized showing that the identifying information should not be released. To the extent that an informant's identity is protected, it will be postponed until 2017.

CIA Employee Name Postponements

Over the past year the CIA has addressed the employee name issue and has released some names that it had previously asked the Board to postpone. But during that time the list of names has grown to a size that had not been imagined at the time the work began. To date, the Review Board staff has identified in the JFK Collection over 650 names of CIA employees. These names appear in more than 1000 documents already reviewed by the Board and numerous additional records that have not yet been processed. While some of these employee names are important to the assassination story, many appear only a few times in the entire JFK Collection and seem to add little, if any, important information.

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[5]In HSCA subjects, there typically will not be information about Ruby, Oswald or the assassination itself. However, in a file on, for example, Sam Giancana, there may be informant reports on Giancana's support of anti-Castro activities, and reports from the same informant on day-to-day numbers operations in the Chicago area. The staff would set a higher priority on release of the former reports than on the latter.

CIA's argument to protect employee names emphasizes a number of points. First, since many employees are "under cover," the maintenance of that cover is critical to gathering intelligence. CIA argues that identification of a name can identify the cover provider and jeopardize operations. Second, although the majority of names are of retired CIA employees, CIA has a confidentiality agreement with them and many do not want their past Agency affiliation released. The argument here is that release may jeopardize business relationships or personal safety. Such arguments have already been presented to the Board. Their merit can only be determined on a case-by-case basis. However, due to the volume of names in the JFK Collection, the individual review and evaluation of each case would delay significantly the review of documents and ultimately lead to less total information becoming available to the public.

CIA has proposed, and the Review Board agrees, that CIA employee names be treated in a manner similar to that applied to Source names: to postpone until 2017 those employee names that are of low public interest or are of peripheral interest to the assassination. It will be presumed that employee names will be released if their identities are important to the assassination story ***unless*** the CIA is able to provide specific information of a potential harm of release. (CIA acknowledges the presumption of release unless specific evidence is provided to the Review Board that harm to national security or to personal safety would result from the release of the employee name.)

FBI "Foreign Counterintelligence" Postponements

It is presumed that the FBI will, at least partially, carry over its post-appeal standards for disclosing "FCI" activities targeting Communist-bloc nations. To the extent that the HSCA subjects reflect "FCI" activities against other nations that have not been addressed by the Review Board in the "core" files, the FBI will be allowed to redact direct discussion of such activities, ***unless*** the information in the proposed redaction meaningfully contributes to the understanding of the assassination.

FBI and CIA Foreign Liaison Postponements

The criteria for these postponements would not, in the abstract, depart significantly from the Review Board's current approach of releasing information received through liaison channels, while protecting direct acknowledgment of the source of the information. In practice, however, the staff would be more flexible in protecting text that implies, although may not unambiguously state, that a foreign government is the source of particular information. Nevertheless, the more significant the information is to any assassination-related issue, the more information would be released under these guidelines.

CIA Stations and Other Issues

Over the past two years the Review Board has established other guidelines that will continue to guide the review process, some of which will be outlined here. For CIA stations, all locations related to the Mexico City story will be released during the period 1960-69. Outside of that window, they will be released on a case-by-case basis should the identity of the station be critical to understanding the assassination. Other stations, except for those identified as particularly sensitive, will be released from the beginning of the Kennedy administration until the publication of the Warren Commission report, (*i.e.*, January 1, 1961 to October 1, 1964). Outside of these windows, stations will be postponed. Cable prefixes, dispatch prefixes, and field report prefixes would be postponed or released according to the same windows as the stations to which they refer. CIA job titles also are redacted or opened along with the station at which the officer served.

Crypts would be released along lines similar to other information. All "LI" crypts, except those considered particularly sensitive would be released through October 1, 1964, as are "AM" crypts and U.S. government crypts. In other areas, only the digraph is protected. Again, the exception is sensitive crypts, which would be protected in their entirety. After October 1, 1964, the presumption shifts towards protection of the crypts, except those that provide meaningful information about the assassination story. (For example, crypts pertinent to Garrison-era documents would likely carry the same presumption of release as those generated during the Warren Commission.)

Surveillance methods will be released if the nature of the surveillance has a material bearing on information related to the assassination ***unless*** CIA provides evidence demonstrating the political or operational sensitivity, in which case the information will be released in 2017.

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MEMORANDUM

September 16, 1997

To: Review Board

From: T. Jeremy Gunn

Subject: Proposed ARRB Timetable for Review of CIA Records

I. Background

The CIA Team has developed a preliminary timetable that we hope will provide a reasonable framework for completing our review of CIA's assassination records by August 1, 1998.[1] We are creating this timetable for three purposes:

First, to establish our own working target dates to measure Review Board progress against the mandatory deadline established by the JFK Act.

Second, to provide CIA with our best assessment of the order and scope of our review so that it can make its own internal judgments on the proper allocation of its resources. We provided CIA prior drafts of this memo and solicited its specific advice and suggestions for better ways to accomplish our goals. [We have not asked CIA to "agree" to these deadlines, but we have encouraged it to provide alternative suggestions on how best to meet the August 1 deadline.]

Third, to solicit the Review Board's advice regarding "enforcement" of these (or other) targets. Although we surely hope that both the ARRB staff and CIA will be able to meet the targets, and although we certainly plan to make all reasonable accommodations for problems that no doubt will arise, we nevertheless anticipate that it is possible that CIA might not be able to keep to these timetables. Thus, we anticipate that there may well be times when blocks of records scheduled for Board review will not have been fully processed by CIA. It is our judgment that, in keeping with our commitment to Congress and to the goals of the JFK Act, we may need to have the Board act on groups of records for which CIA has not completed its initial review. At the risk of over-repetition, the ARRB staff seeks to be as reasonable and accommodating as it can on timetables, ***provided that any proposed changes are consistent with our obligation to complete the task.*** We realize that this review may have resource-allocation

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[1]By establishing this target date, we will provide ourselves with a two-month cushion to handle possible appeals and miscellaneous issues that doubtless will arise.

consequences for CIA and we expect to refine this timetable both to minimize the resource impact and to allow us and the CIA to proceed most efficiently with the review. We also take very seriously our commitment to Congress to complete our work on schedule. Is the Board prepared to make decisions on records if CIA has not completed its review and to enforce those decisions?

II. Issues applying to all CIA record groups

Records to be opened-in-full

During the course of CIA's review, it frequently identifies records that is it is prepared to open in full without Board action. Although there is a benefit in promptly forwarding such records to NARA, it is less expensive for CIA to process these records during the summer months. Accordingly, we are prepared to agree with CIA that it may delay processing such records, provided that all such processing of open-in-full records will be completed by August 30, 1998.

Duplicates

CIA will continue to identify duplicates and may process them after all other documents have been reviewed and transferred to NARA. If the ARRB is shown that any given record is a duplicate, CIA need not complete the processing before September 30, 1998.

III. CIA Record Groups

A. Oswald 201 File (17 boxes)

- current status:

review completed (with a few minor exceptions)

B. CIA Sequestered Collection

1. "The 63 boxes"

- current status:

The ARRB staff has completed a survey of the 63 boxes (on the folder level) and has assigned each folder a relevance priority on a 1 to 4 scale. CIA has completed its declassification review of roughly 66% of the priority 1 folders.

The ARRB Staff has completed its own review of approximately 50% of the priority 1 records and those records have been (or shortly will) be voted on by the Board.

- target dates:
  Completion of final review of 63 boxes by January 31, 1998.

- time line:

9/30/97	box 40	(priority 1)
10/31/97	box 48	(priority 1)
11/30/97	box 56	(priority 1)
12/31/97	box 63	(priority 1)
1/31/98	all priority 2, 3 and 4	

2. HSCA Staff notes (originally interfiled in the 63 boxes)
   - status:
     Record Identification Forms prepared for all documents. CIA review is 80% complete. ARRB staff completes its review shortly after receiving records from CIA.

   - target dates:
     Complete Board voting by November 18, 1997.

3. Microfilm (72 boxes)
   - current status:
     CIA identified approximately 33% of these records as NBR. ARRB staff has reviewed all CIA NBR designations, and has identified additional records that should be reviewed by the Board.

     The ARRB Staff will discuss with the CIA the preparation of Record Identification Forms (RIFs or "IDEN aids" in CIA terminology) and develop a plan that will best facilitate review.[2]

   - target dates:
     CIA begins review by November 1, 1997 and completes review by July 1, 1998.

     Complete Board determinations by July 31, 1998.

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[2]The ARRB staff has no objection to the records being identified entirely on the folder level provided that all records in the folder are open-in-full. If there are records in which the CIA is requesting redactions, those records must be identified individually. The remainder of open-in-full records may still be identified with one RIF as being the contents of the same folder.

- tentative time line:

11/30/97	boxes 1-6
12/31/97	boxes 7-13
1/31/98	boxes 14-19
2/28/98	boxes 20-25
3/31/98	boxes 26-31 & 44-45
	(Boxes 32-43 contain LHO's 201 file, which will be treated as a special case.)
4/30/98	boxes 46-51
5/31/98	boxes 52-62
6/30/98	boxes 63-72

4. Microfilm copy of Oswald 201 (approximately 12 boxes)
   - issue:

     The vast majority (if not all) Oswald Microfilm records are duplicates of records the Board has already reviewed under the JFK Act. To the extent that the records previously have been reviewed, there is little value in re-reviewing the records. The ARRB staff will survey the Microfilm 201 in an effort to identify any additional records that have not already been acted upon by the Board. All records not previously acted upon by the Board will be so designated, a RIF will be prepared, and they will be sent for Board action. The remaining Microfilm 201 will be transferred to the JFK Collection at NARA and opened in full in 2017.

   - status:

     Staff has completed its initial survey and has thus far identified no records in the 201 Microfilm that are not already in the JFK Collection.

C. "Working Files" (including "Russ Holmes" papers, etc.)
   - status:

     No Record Identification Forms have been prepared. ARRB staff has conducted a general survey.

   - target dates:

     Work to commence by CIA on October 1, 1997. CIA should prepare Record Identification Forms for all records by January 1, 1998. Completion of review and Board determinations by March 31, 1998.

-strategy:

The "working files" is a group of records that was assembled at CIA by Russ Holmes. Although he was not asked formally by CIA to create this separate records group, he did so in order to facilitate his work and, perhaps, to satisfy his own curiosity. The group contains many original records (copies of some of which are already in the collection) and it includes some records of which we are aware of no other copies. It is the best-organized collection of assassination records held by CIA. Its value as a reference tool is greatest as a collection. Therefore, though the file contains many duplicates of records found in the JFK collection, the ARRB staff recommends that it be preserved as a single group. Duplicates and open-in-full documents should be treated in the same manner as they are in the rest of the JFK Collection. As with the microfilm from the Sequestered Collection, the ARRB staff has no objection to the records being identified on the folder level provided that all records in the folder are open-in-full. If there are records in which CIA is requesting redactions, those records must be identified individually. The remainder of open in full records may still be identified with one RIF as being the contents of the same folder.

D. Additional Records

- status:

Research, requests, and negotiations continue to identify and include additional CIA records for the JFK collection.

Oswald Office of Security File. As a result of an ARRB staff request for additional information and records, CIA located portions of a previously undisclosed Office of Security file on Lee Harvey Oswald. This seven-volume file, of which six parts have been located, contains two volumes of press clippings, third agency material on Oswald, a copy of Oswald's address book, and Marina Oswald's INS file. In the upcoming months CIA will begin to review and process these materials.

- time line:

Completion by July 31, 1998.

- strategy:

Continue current efforts.

E. Referrals

1. HSCA referrals (Numbered files, Security Classified Testimony, etc.)
   - status:
     most of these records have been reviewed. The database suggests that a percentage of them has slipped through the cracks.
   - target date:
     Complete Congressional records to be reviewed by March 31, 1998.
   - strategy:
     Continue to clarify the status of records. Review any remaining records.

2. Other referrals (FBI, Church Committee, LBJ Library, JFK Library, etc.)
   - status and strategy:
     Records will be coordinated and reviewed on a case by case basis.

TJG e:\...\cia\timetabl.wpd
4.20.7

12 July 1996

Visit for 22 July 1996; 10:00 a.m.

Presidential JFK Assassination Records Review Board

	Date of Birth	SSN
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Michelle Marie Seguin	1/12/69	376-88-5236
Robert John Skwirot	7/28/56	209-50-4324
Manuel Espiritu Legaspi	8/04/68	568-53-8907
Mary Sperling McAuliffe	9/25/43	366-44-4357
Christopher Meade Barger	6/25/68	469-98-3261
Thomas Jeremy Gunn Legal Counsel	8/25/52	529-74-8907

SECRET

15 May 1995

FOR: David Marwell
Executive Director, ARRB

FROM: John Pereira
CIA/Historical Review Group

SUBJECT: Mexico City/Sensitive Information

The Directorate of Operations prepared the attached statement to assist the Assassination Records Review Board. The statement explains the sensitivity of the records related to telephone tap operations in Mexico City. This may help provide a perspective for further discussions on the subject.

John Pereira

Attachment

SECRET

SUBJECT: Release of Information on Mexico City Teltaps

1. Protection of sources and methods and liaison equities require that references to the Mexico City Station teltap activity be excised from any documents released under the auspices of the JFK Assassination Record Collection Act of 1992. While the teltap activity mentioned in the documents under review occurred some thirty plus years ago, the joint teltap operation with Mexican liaison has never been terminated; it continues to this day in a slightly different form.

2. Release of any information that would constitute official USG acknowledgment of the existence of the joint teltap operation would have a serious adverse impact on current operations. Relations between the Station and the liaison service would be affected, with the likely outcome of discouraging liaison from cooperating in similar ventures in the future with Mexico City Station. Official acknowledgment of the existence of the joint teltap in the 1960's would embarrass the liaison service given Mexico's strong brand of nationalism and sensitivity towards the issue of sovereignty vis a vis the United States. The service probably would terminate its cooperation with the Station on the current joint teltap operation in order to be able to defend itself against domestic critics.

13-00000

CIA HAS NO OBJECTION TO
DECLASSIFICATION AND/OR
RELEASE OF CIA INFORMATION
IN THIS DOCUMENT

OFFICE PHONE LIST

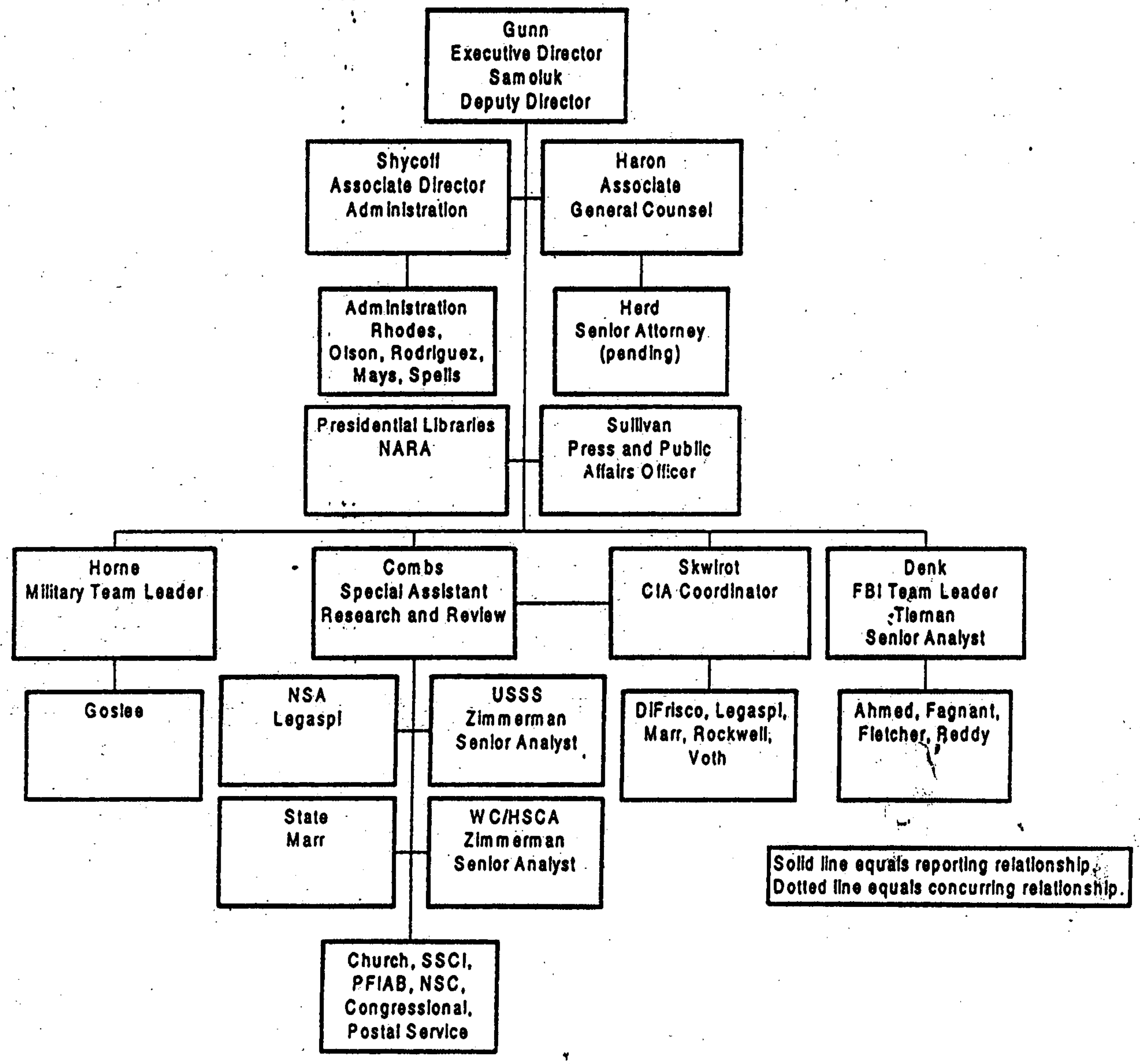
Ahmed, Sarah	260
Combs, Michelle	262
Denk, Laura	265
DiFrisco, Jessica	258
Fagnant, Marie	230
Fletcher, Carrie	247
Goslee, Jim	259
Gunn, Jeremy	226/267
Haron, Ron	239
Horne, Doug	245
Legaspi, Manuel	261
Marr, Irene	243
Mays, Christina	255
Olson, Jerrie	254
Reddy, Sydney	246
Rhodes, Chet	240
Rockwell, Benjamin	242
Rodriguez, Cathy	238
Samoluk, Tom	227 V-mail
Shycoff, Tracy	233
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Spells, Janice	221
Sullivan, Eileen	253
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Voth, Peter	256
Zimmerman, Joan	263
Kitchen	223
Board Room	236
SCIF	241
Guest Phone	225
Juelich, Rochelle (Intern)	224

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13-00000

Assassination Records Review Board Staff
October 1, 1997



13-00000

Assassination Records Review Board
600 E Street NW • 2nd Floor • Washington, DC 20530
(202) 724-0088 • Fax: (202) 724-0457

THE ASSASSINATION RECORDS REVIEW BOARD

"All Government records concerning the assassination of President John F. Kennedy should carry a presumption of immediate disclosure."
The President John F. Kennedy Assassination Records Collection Act of 1992
Public Law 102-526, October 26, 1992

Introduction to the Assassination Records Review Board

The Assassination Records Review Board is an independent federal agency created to oversee the identification and release of records related to the assassination of President John F. Kennedy.

The Review Board was established by The President John F. Kennedy Assassination Records Collection Act of 1992 (PL 102-526), and was signed into law by President George Bush. The five members of the Board were appointed by President Clinton, confirmed by the United States Senate, and sworn in on April 11, 1994.

The law gives the Assassination Records Review Board the mandate and the authority to identify, secure, and make available all records related to the assassination of President Kennedy.

The Board has until September 30, 1998 to fulfill its mandate.

The Review Board Members

The Review Board consists of the following members:

1. The Honorable John R. Tunheim, Chair; United States District Court Judge, District of Minnesota.

2. Dr. Henry F. Graff; Professor Emeritus of History at Columbia University.

3. Dr. Kermit L. Hall; Dean, College of Humanities, and Professor of History and Law at The Ohio State University.

4. Dr. William L. Joyce; Associate University Librarian for Rare Books and Special Collections at Princeton University.

5. Dr. Anna K. Nelson; Distinguished Adjunct Historian in Residence at The American University.

The Law
The President John F. Kennedy Assassination Records Collection Act was enacted by the Congress and signed into law by President George Bush on October 26, 1992. The law states "All Government records concerning the assassination of President John F. Kennedy should carry a presumption of immediate disclosure."

The law mandates that all assassination-related materials be housed in a single collection in the National Archives and Records Administration (NARA).

The Act defines five categories of information for which disclosure may be postponed, including national security, intelligence gathering, and privacy -- provided there is "clear and convincing evidence" of some harm which outweighs public disclosure.

The law requires all federal agencies to make an initial assessment of whether they possess records relating to the assassination. The agencies themselves will conduct an initial review to determine whether their records may be disclosed immediately or whether disclosure should be postponed. The agencies must then give all records that are not disclosed to the Review Board. The Review Board will then evaluate all agency decisions to postpone the release of records. Once the Board completes its review of an agency's recommendation for postponement, all records, including those that have a postponed release date, will be transferred to NARA. The Act requires that all assassination records must be opened by 2017, with the exception of records certified for continued postponement by the President.

Authority of the Assassination Records Review Board
The Senate report of The President John F. Kennedy Assassination Records Collection Act of 1992 stated that " the underlying principles guiding the legislation are independence, public confidence, efficiency and cost effectiveness." In order to achieve these objectives, the Act gave the Board the specific powers to:

* direct government offices to provide identification aids and organize assassination records;

* direct government offices to transmit assassination records to the National Archives;

* obtain assassination records that have been identified and organized by a Government office;

* direct government offices to investigate the facts, additional information, records, or testimony from individuals which the Board has reason to believe is required;

* request the Attorney General to subpoena private persons to compel testimony, records, and other relevant information;

* require any Government office to account in writing for the destruction of any records relating

to the assassination of President Kennedy;

* receive information from the public regarding the identification and public disclosure of assassination records; and

* hold hearings, administer oaths, and subpoena witnesses and documents.

Background and Need for the Law

On November 22, 1963, President John F. Kennedy was assassinated while traveling in a motorcade in Dallas, Texas. His tragic death, and the subsequent murder of Lee Harvey Oswald, the President's alleged assassin, led to the creation of The Warren Commission, seven days after the assassination.

Amid continuing public doubts that all of the facts surrounding the assassination had not come to light, the House of Representatives established the House Select Committee on Assassinations in 1976 to reopen the investigation.

In addition to these two major federal investigations devoted to the investigation of the assassination of President Kennedy, three other federal investigatory bodies have dealt with the assassination to some degree. President Ford created The Rockefeller Commission in 1975 to investigate Central Intelligence Agency activities within the United States. Part of the Commission's efforts related to the Kennedy assassination. Also in 1975, Congress created the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the Church Committee) and the House Select Committee on Intelligence (the Pike Committee). Some of the work of these committees was related to the assassination.

Despite these official investigations and with private researchers continuing their efforts, the public was not satisfied that all of their questions about the assassination of President Kennedy had been answered. The result was the passage of The President John F. Kennedy Assassination Records Collection Act of 1992, which included the creation of the Assassination Records Review Board.

Contacting the Assassination Records Review Board

The President John F. Kennedy Assassination Records Collection Act of 1992 provides that the Review Board has the authority to "receive information from the public regarding the identification and public disclosure of assassination records."

If you have relevant information regarding records relating to the assassination of President John F. Kennedy, or would like to learn more about the Board, please contact us at:

The Assassination Records Review Board
600 E Street, N.W., Second Floor
Washington, D.C. 20530
Telephone: (202) 724-0088; Fax: (202) 724-0457